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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1934

No. 541

EDWARD B. DOUGLAS, PETITIONER,

*vs.*

LEWI M. WILLCUTS, AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MINNESOTA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 26, 1934.

CERTIORARI GRANTED APRIL 8, 1935.

# SUPREME COURT OF THE UNITED STATES

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1 United States District Court, District of Minnesota, Third Division.

Edward B. Douglas, Plaintiff,
No. 2390 vs. Law.
Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, Defendant.

Pleas before the Honorable, the Judges of the United States District Court for the District of Minnesota.

Be it remembered that on the 26th day of December, 1931, there was filed in said Court in the above entitled action a complaint, in the words and figures following:

2 Complaint.

United States District Court, District of Minnesota, Third Division.

Edward B. Douglas, Plaintiff,
No. 2390. vs. At Law.
Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, Defendant.

Comes now Edward B. Douglas, plaintiff herein, and for his cause of action herein against the defendant alleges:

I.

Plaintiff is and at all times hereinafter mentioned was a citizen of the United States and a resident of Deephaven, Hennepin County, in the State and District of Minnesota.

II.

The defendant Levi M. Willcuts was, in the year 1921, at all times since has been and now is the duly appointed, qualified and acting Collector of Internal Revenue of the United States in and for the District of Minnesota.

III.

This is a suit of a civil nature at common law, arising under the constitution and laws of the United States and par-

ticularly under the laws of the United States pertaining to internal revenue.

IV.

On the 12th day of September, 1923, plaintiff created the trust, hereinafter described as the Ida M. Douglas Trust, by that certain agreement dated September 12th, 1923, by and between Edward Bruce Douglas, party of the first part, Ida M. Douglas, party of the second part, and Minneapolis Trust Company, party of the third part, of which Exhibit I, hereto attached and hereby made a part hereof, is a true and correct copy. On September 12, 1923, plaintiff conveyed, assigned, transferred and set over to Minneapolis Trust Company, as Trustee under said agreement, the securities
3 listed and described in Exhibit "A" attached to said agreement. On November 6, 1927, plaintiff conveyed, assigned, transferred and set over to Minneapolis Trust Company, as Trustee, the securities listed and described in Exhibit II hereto attached and hereby made a part hereof. The net income of said Ida M. Douglas Trust for the calendar year ended December 31, 1928, distributable to the beneficiary thereof was Seventeen Thousand Six Hundred Seventeen and 39/100 Dollars ($17,617.39). Said net income was the interest, dividends and other yield paid to said Minneapolis Trust Company for and on account of said securities so conveyed, assigned, transferred and set over to it or securities held by it in lieu of said securities. Said net income consisted of the following items, to-wit: Interest on tax-free covenant bonds, Nine Thousand Two Hundred Sixty and 96/100 Dollars ($9,260.96); tax paid at source on tax-free covenant bonds, One Hundred Eighty-five and 22/100 Dollars ($185.22); cash dividends Six Thousand Four Hundred Forty-one and 96/100 Dollars ($6,441.96); other income One Thousand Nine Hundred Fourteen and 47/100 Dollars ($1,914.47).

V.

On the 16th day of March, 1928, plaintiff created the trust hereinafter described as the Florence S. Douglas Trust, by that certain agreement dated March 16, 1928, by and between Edward B. Douglas, party of the first part, First Minneapolis Trust Company, party of the second part, and Florence S. Douglas, party of the third part, of which Exhibit III, hereto attached and hereby made a part hereof, is a true and correct copy. On March 16, 1928, plaintiff conveyed, assigned, transferred and set over to First Minneapolis Trust Company, as Trustee under said agreement, the securities listed and described in Exhibit "A" attached to said agreement. Upon the execution of said agreement

and pursuant thereto plaintiff irrevocably surrendered all power and right to change the beneficiary of the policies of insurance listed in Schedule "B" attached to said agreement. The net income of said Florence S. Douglas Trust for the calendar year ended December 31, 1928, distributable to the beneficiary thereof was Twenty-eight Thousand Six Hundred Nineteen and 95/100 Dollars ($28,619.95). Said net income was the interest, dividends and other yield paid to the First Minneapolis Trust Company for and on account of said securities so conveyed, assigned, transferred and set over to it or securities held by it in lieu of said securities.

Said net income consisted of the following items, to-
4 wit: Interest on tax-free covenant bonds, One Hundred Twenty Dollars ($120.00); tax paid at source on tax-free covenant bonds, Two and 40/100 Dollars ($2.40); cash dividends, Seventeen Thousand Eighty-seven Dollars ($17,087.00); other income, Eleven Thousand Four Hundred Twelve and 95/100 Dollars ($11,412.95).

Plaintiff, in compliance with the provisions of the Revenue Act of 1928, Title 26, U. S. C. A., par. 2001, et seq. and on or about March 15th, 1929, made and filed his return to the defendant as Collector of Internal Revenue of the United States in and for the District of Minnesota of income, deductions and tax liability for the calendar year ended December 31, 1928. In computing his net income disclosed in said return plaintiff did not include in his gross income for the calendar year ended December 31, 1928, the sum of Seventeen Thousand Six Hundred Seventeen and 39/100 Dollars ($17,617.39), the net income aforesaid of said Ida M. Douglas Trust, or any part of the sum of Twenty-eight Thousand Six Hundred Nineteen and 95/100 Dollars ($28,619.95), the net income aforesaid of said Florence S. Douglas Trust.

VII.

On or about October 16th, 1930, the Commissioner of Internal Revenue of the United States, in connection with an audit of plaintiff's said return for the calendar year ended December 31, 1928, and an examination of his books and records and the books and records of said Minneapolis Trust Company and First Minneapolis Trust Company, assuming to act, as plaintiff is informed and believes under the provisions of Section 162(b) of said Revenue Act of 1928, being paragraph 2162(b), Title 26 U. S. C. A., and Section 167 of said Revenue Act of 1928, being paragraph 2167, Title 26, U. S. C. A., determined that plaintiff was required to include in his gross income for said calendar year ended December 31, 1928, the sum of Seventeen Thousand

Six Hundred Seventeen and 39/100 Dollars ($17,617.39), the net income aforesaid of said Ida M. Douglas Trust, and One Thousand Forty-six and 98/100 Dollars ($1,046.98) of the sum of Twenty-eight Thousand Six Hundred Nineteen and 95/100 Dollars ($28,619.95), the net income aforesaid of said Florence S. Douglas Trust. Said amount of One Thousand Forty-six and 98/100 Dollars ($1,046.98) is that portion of the premiums on the policies of insurance described in Exhibit III hereof and Schedule "B" thereto attached, paid in the calendar year ended December 31, 1928, by First Minneapolis Trust Company from the income of said Florence S. Douglas Trust, not derived from tax-exempt securities. Upon said determination said Commissioner of Internal Revenue included said sums in plaintiff's gross income for said calendar year ended December 31, 1928, and recomputed plaintiff's tax liability for said year. Said Commissioner of Internal Revenue thereupon determined that plaintiff was liable for an additional tax for said calendar year in the amount of Two Thousand Five Hundred Eighty-one and 74/100 Dollars ($2,581.74), which amount, together with interest thereon in the amount of Two Hundred Fifty-nine and 87/100 Dollars ($259.87), was, by said Commissioner, assessed against plaintiff in March, 1931. Said additional tax liability and said interest arise by reason of said determination by said Commissioner of Internal Revenue.

## VIII.

On March 28, 1931, defendant demanded of plaintiff that he pay Two Thousand Eight Hundred Forty-one and 61/100 Dollars ($2,841.61), being the sum of the additional tax and interest aforesaid. Pursuant to said demand and under protest, and to prevent distraint and the imposition of further interest, penalties and costs, plaintiff paid to defendant said sum of Two Thousand Eight Hundred Forty-one and 61/100 Dollars ($2,841.61) on March 30th, 1931.

## IX.

On April 8th, 1931, plaintiff filed with said Commissioner of Internal Revenue his claim for the refund of the sum so paid by plaintiff to the defendant on March 30, 1931, a copy of which said claim is hereto attached, marked Exhibit IV and made a part hereof. On December 4, 1931, said Commissioner of Internal Revenue rejected plaintiff's claim aforesaid in full by letter dated December 4, 1931, a copy of which, marked Exhibit V, is hereto attached and hereby made a part hereof.

For a Second Cause of Action.

X.

Plaintiff repeats and makes a part of this action each and every allegation in paragraphs I, II, III and the first three (3) sentences of paragraph IV and alleges:

6

XI.

The net incom of said Ida M. Douglas Trust for the calendar year ended December 31, 1927, distributable to the beneficiary thereof, was Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52). Said net income was the dividends and other yield paid to said Minneapolis Trust Company for and on account of said securities so conveyed, assigned, transferred and set over to it or securities held by it in lieu of said securities. Said net income consisted of the following items, to-wit: Dividends, Nine Thousand Eight Hundred Fifty-seven and 66/100 Dollars ($9,857.66); other income, Two Thousand Seven Hundred Fifty-two and 86/100 Dollars ($2,752.86).

XII.

Plaintiff, in compliance with the provisions of the Revenue Act of 1926, Title 26, U. S. C. A., par. 931, et seq., and on or about March 15th, 1928, made and filed his return to the defendant, as Collector of Internal Revenue of the United States in and for the District of Minnesota, of income, deductions and tax liability for the calendar year ended December 31, 1927. In computing his net income disclosed in said return plaintiff did not include in his gross income for the calendar year ended December 31, 1927, the sum of Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52), the net income aforesaid of said Ida M. Douglas Trust.

XIII.

On or about March 5, 1931, the Commissioner of Internal Revenue of the United States, in connection with an audit of plaintiff's said return for the calendar year ended December 31, 1927, and an examination of his books and records and the books and records of said Minneapolis Trust Company, assuming to act, as Plaintiff is informed and believes, under the provisions of Section 219 (b) (2) of said Revenue Act of 1926, being paragraph 960, Title 26, U. S. C. A., determined that plaintiff was required to include in his gross income for said calendar year ended December 31, 1927, the said sum of Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52), the net income aforesaid of said Ida

M. Douglas Trust. Upon said determination said Commissioner of Internal Revenue included said sum in plaintiff's gross income for said calendar year ended December 31, 1927, and recomputed plaintiff's tax liability for said
7 year. Said Commissioner of Internal Revenue thereupon determined that plaintiff was liable for an additional tax for said calendar year in the amount of One Thousaid Seven Hundred Fifty-eight and 38/100 Dollars ($1,758.38), which amount, together with interest thereon in the amount of Three Hundred Thirty-six and 40/100 Dollars ($336.40) was, by said Commissioner, assessed against plaintiff in May, 1931. Said additional tax liability and said interest arise by reason of said determination by said Commissioner of Internal Revenue.

XIV.

On June 3, 1931, defendant demanded of plaintiff that he pay Two Thousand Ninety-four and 78/100 Dollars ($2,094.78), being the sum of the additional tax and interest aforesaid. Pursuant to said demand and under protest, and to prevent distraint and the imposition of further interest, penalties and costs, plaintiff paid to defendant said sum of Two Thousand Ninety-four and 78/100 Dollars ($2,094.78) on June 4, 1931.

XV.

On or about June 15, 1931, plaintiff filed with said Commissioner of Internal Revenue his claim for the refund of the sum so paid by plaintiff to the defendant on June 4, 1931, a copy of which said claim is hereto attached, marked Exhibit VI and made a part hereof. More than six months have expired since the date of filing said claim of refund and plaintiff has not been notified that said Commissioner of Internal Revenue has rendered his decision thereon and upon information and belief plaintiff alleges that said Commissioner of Internal Revenue has not rendered a decision thereon. No part of said additional tax for said calendar year ended December 31, 1927, and no part of the interest thereon, so paid as aforesaid, has ever been refunded to plaintiff.

Wherefore, plaintiff demands judgment against defendant in the sum of Two Thousand Eight Hundred Forty-
8 one and 61/100 Dollars ($2,841.61), with interest thereon according to law from the 30th day of March, 1931, and judgment against defendant in the sum of Two Thousand Ninety-four and 78/100 Dollars ($2,094.78), with inter-

est thereon according to law from June 4th, 1931, together with his costs and disbursements herein.

Dated December 22nd, 1931.

LELAND W. SCOTT,
JUNELL, OAKLEY, DRISCOLL & FLETCHER,
Attorneys for Plaintiff,
1310 First National-Soo Line Building
Minneapolis, Minn.

State of Minnesota,
County of Hennepin—ss:

A. B. Whitney being first duly sworn says that he is the Vice-President of First Minneapolis Trust Company, the duly appointed attorney-in-fact of the plaintiff above named; that First Minneapolis Trust Company is acting in the matter referred to in the foregoing Complaint pursuant to a Power of Attorney, which has not been revoked, given and executed by the Plaintiff; that the reason why this verification is not made by the plaintiff is that he is absent from the United States, wherein affiant resides; that affiant has read the foregoing complaint and is familiar with the statements contained therein; that the facts therein stated are true, except as to those facts stated to be upon information and belief and those facts he believes to be true.

A. B. WHITNEY.

Subscribed and sworn to before me this 24th day of December, A. D. 1931.

(Notarial Seal)

L. H. ROUSE,
Notary Public Hennepin County, Minn.

My commission expires March 15th, 1938.

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9

Exhibit I.

This Agreement, made in triplicate this 12th day of September, A. D., 1923, by and between Edward Bruce Douglas, party of the first part, Ida M. Douglas, party of the second part, and Minneapolis Trust Company, a corporation under the laws of the State of Minnesota, with its principal place of business in the City of Minneapolis, as Trustee (and hereinafter for brevity sometimes called the "Trustee", party of the third part, Witnesseth As Follows:

That in consideration of One Dollar ($1.00) and other valuable consideration to the parties of the first and second parts

paid, the receipt and sufficiency whereof are hereby acknowledged, and of the mutual settlements and adjustments of rights and interest in and to the estate and property herein involved by virtue of the execution of this agreement, the party of the first part hereby conveys, assigns, transfers and sets over to the party of the third part as Trustee securities of the par or estimated value of Three Hundred [Thirty] Thousand Dollars ($300,000), a list of which securities is contained in Exhibit "A" hereto annexed, and does further transfer, set over and agree to assign and deliver on November 6, 1927, such proportion of the properties which he will on said day receive from the estate of his father, Walter D. Douglas, under the provisions of his father's will, as One Hundred Twenty Thousand Dollars ($120,000) bears to the entire property then received by him under said will, and agrees at said time to transfer to the Trustee securities of the par value of One Hundred Twenty Thousand Dollars ($120,000) to be approved by the Trustee as the representative of the party of the second part as reasonably safe income producing securities.

To Have And To Hold the same upon trust, however, for the following uses and purposes, to-wit:

1. To pay from the principal of said trust estate as soon as may be convenient after the execution and delivery of this trust agreement, the following amounts:

(a) The sum of Twenty-two Thousand Five Hundred Dollars ($22,500) in cash to the party of the second part from which she undertakes and agrees to pay all bills incurred by her up to the present time, which might be a charge against the party of the first part, and which the party of the first part has not heretofore expressly agreed to pay.

(b) An additional sum of Seventy-five Hundred Dollars ($7500) to Lancaster, Simpson, Junell & Dorsey of Minneapolis, Minnesota, for services rendered the party of the second part by said firm, and by Nicoll, Anable, Fuller & Sullivan of New York City.

2. To pay from the income from said trust estate to the party of the second part annually during her life time the following amounts:

(a) The sum of Fifteen Thousand Dollars ($15,000) per annum beginning as of September 1, 1923, up to, and until the 6th day of November 1927.

(b) The sum of Twenty-one Thousand Dollars ($21,000) per annum beginning November 6, 1927, and continuing during the lifetime of the party of the second part.

Said payments to be made in quarterly instalments on the first days of December, March, June and September, the first payment to be made December 1, 1923.

(c) To pay the amount of income tax that may be payable by said party of the second part on the specific amount of income receivable by her hereunder. The amount of such income tax so payable from the trust estate shall be computed on the basis that the specific amount of income receivable by the party of the second part from said trust estate is her total income.

3. The Trustee shall have the right and is hereby authorized to collect the interest and principal from all securities in said trust fund and reinvest the same in similar securities, and the party of the first part may from time to time substitute and change the securities in said trust fund; subject, however, to the consent and approval of the party of the third part. The party of the first part reserves to himself the right from time to time to designate and determine in what securities said trust shall be invested, subject, however, to the approval of the Trustee, acting in that respect for the party of the second part, as to the reasonable safety and adequate income-producing nature of such securities.

In case the net income from said trust fund is not sufficient at any time to pay the future payments above provided to be made to the party of the second part at the time the same are due, then the party of the third part shall request such deficiency to be immediately made good by the party of the first part. If the party of the first part shall fail to make good such deficiency before the instalment which becomes due next after the date of said notice is payable, then the party of the third part shall make up such deficiency from the principal of said trust fund through the sale of securities or otherwise as it may deem advisable.

In case the net income from said trust fund exceeds the payments required from time to time to be made, and if the principal of said trust fund is not presently impaired, then the party of the third part shall pay such excess to the party of the first part, his heirs, executors, administrators or assigns, with the right, however, to from time to time reserve a reasonable amount of income to fairly insure the prompt payment of future instalments to the party of the second

part. If, however, the principal of said trust fund shall at any time be impaired, and if the party of the first part shall not make good such impairment, all income from said trust fund—in excess of the amount from time to time required for the annual payments and charges against said fund—shall become a part of the principal of said trust fund and be added thereto to be invested and reinvested in the manner hereinbefore provided, until the aggregate amount for the time being of the securities in said trust fund shall reach the principal amount above specified.

In case any of the securities in said trust fund shall become of impaired or doubtful value, or not likely in the opinion of the trustee to produce a fair proportionate
12 amount of the income herein provided, then in such case the trustee shall request the party of the first part to substitute other securities therefor and the party of the first part shall thereupon substitute therefor an equal amount par or estimated value of reasonably safe and adequate income producing securities satisfactory to the Trustee, it being intended hereby and the party of the first part undertakes and agrees to keep the principal of said trust fund continuously up [—] the amounts herein provided.

4. The principal amount of the trust fund hereby created shall be deemed to be the sum of Three Hundred Thousand Dollars ($300,000) up to November 6, 1927, and thereafter the sum of Four Hundred Twenty Thousand Dollars ($420,000) plus any accretions thereto from profits and stock dividends referred to in paragraph 6 hereof.

5. It is expressly agreed by and between the parties hereto, and more especially by the party of the second part, that the provisions herein made for her are in lieu of, and in full settlement of alimony, and of any and all dower rights or statutory interests in the estate of the party of the first part, and in lieu of any and all claims for separate maintenance and allowance for her support.

6. By the term "net income" hereunder shall be meant the income and interest arising from the said trust fund, exclusive of the profits realized from the sale of any of the items thereof and exclusive of stock dividends (such profits and stock dividends being counted a part of the principal thereof, to be added thereto) and less income tax paid by the trustee as above provided and any necessary charges and expenses paid or incurred in connection with the management and protection of said trust fund and the Trustee's proper compensation for its services hereunder.

7. The securities belonging to said trust fund shall be held in the name of the party of the third part as Trustee under this agreement and shall constantly be shown on its books and records to be a part of said trust estate, and all funds belonging thereto shall be deposited in its name as
13 Trustee, and the Trustee shall during the month of November of each year make a written report as to the conditions of said trust fund to the party of the first part and to the party of the second part, said report to contain a complete inventory and description of the securities and properties belonging to said trust fund and a complete statement of the principal and income receipts and disbursements in connection therewith.

8. The party of the third part as Trustee shall receive reasonable compensation for its services hereunder not exceeding, however, five per centum (5%) of the income collected from all securities hereby assigned to it, or which may hereafter become a part of said Trust Estate, and from all investments and reinvestments hereunder made by it during the existence of said Trust, and one per centum (1%) of the principal distributed upon final distribution thereof, whether by distribution to the party of the first part, his heirs, executors, administrators, successors, or assigns, or to a successor Trustee, appointed pursuant to the terms and conditions of this agreement, it being understood that the party of the third part or the Trustee hereunder for the time being may purchase through its investment departments with the principal funds belonging to said Trust Estate, securities of the kind herein authorized, as they may be offered to the public, without affecting the Trustee's right to the compensation above specified for its services.

9. The party of the first part, his heirs, executors, administrators or assigns, may at any time with the written consent of the party of the second part appoint a successor trustee, in place and stead of the Trustee herein designated or the trustee then acting by designating and appointing such successor trustee in writing, and upon paying to the then acting trustee all charges and fees due and owing to it or accruing to it pursuant to the terms of this agreement; and upon there being deposited with the trustee then acting, the written appointment of a successor trustee, signed by the party of the first part, the written consent of the party of the second part consenting to such appointment, and a written and duly executed acceptance of the trust by
14 the successor trustee appointed, and upon there being paid to the acting trustee the charges and fees afore-

said, the acting trustee shall duly transfer to the successor trustee all of the property and funds then belonging to the trust estate hereby created.

10. The obligations of this agreement shall be binding upon the heirs, executors, administrators and assigns of the party of the first part, and upon the successor and successors of the party of the third part, and the benefits hereof, after the termination of the trust hereby created, shall inure to the party of the first part, his heirs, executors, administrators and assigns.

11. Upon the death of the party of the second part, the party of the third part shall assign, transfer and set over all securities and moneys held by it hereunder to the party of the first part, his heirs or assigns, and this trust and this agreement shall then cease and terminate.

In Witness Whereof, the parties of the first and second part have hereunto set their hands and seals, and the party of the third part has caused these presents to be executed and its corporate seal to be hereunto affixed the day and year first above written.

EDWARD B. DOUGLAS (Seal)
IDA M. DOUGLAS (Seal)

Signed, Sealed and Delivered
Joseph H. Colman
May Finnegan

MINNEAPOLIS TRUST COMPANY,
By A. B. Whitney,
Its Vice President.

Joseph H. Colman
May Finnegan

Attest: H. VERDELIN,
Its Ass't Secretary.

33759

Lew G. Wallace
H. D. Manchester

15 State of Minnesota,
County of Hennepin—ss:

On this 14th day of September, 1923, before me, a Notary Public within and for said County and State personally appeared Edward Bruce Douglas to me personally known to be the person described in and who executed the foregoing in-

strument and he acknowledged that he executed the same as his free act and deed.

MAY FINNEGAN,
Notary Public, Henn. Co., Minn.

My Commission expires July 6th, 1930.

State of Minnesota,
County of Hennepin—ss.

On this 13th day of September, 1923, before me, a Notary Public within and for said County and State personally appeared Ida M. Douglas, to me personally known to be the person described in and who executed the foregoing instrument, and she acknowledged that she executed the same as her free act and deed.

MAY FINNEGAN,
Notary Public, Henn. Co., Minn.

My Commission expires July 6, 1930.

State of Minnesota,
County of Hennepin—ss.

On this 21st day of September, before me a Notary Public within and for said County, personally appeared A. B. Whitney and H. Verdelin, to me personally known, who being by me duly sworn, did say that they are the Vice President and Ass't. Secretary respectively of Minneapolis Trust Company, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said A. B. Whitney and said H. Verdelin acknowledged said instrument to be the free act and deed of said corporation.

LEW G. WALLACE,
Notary Public, Hennepin County, Minn.

My Commission Expires Aug. 2nd, 1930.

---

16 Exhibit A

| | Municipal Bonds | Par | Due | Rate | Amount | Return |
|---|---|---|---|---|---|---|
| 2 | Becker County Ditch Bonds | 1,000 | Feb. 1, '53 | 5¼% | 2,000 | 115.00 |
| 3 | Blue Earth County Ditch | 1,000 | June 15, '38 | 6 | 3,000 | 180.00 |
| 3 | Cass County Sch. Dist. #19 | 1,000 | Mar. 1, '35 | 6 | 3,000 | 180.00 |
| 8 | Faribault County Ditch | 500 | Jan. 1, '34 | 5 | 4,000 | 100.00 |
| 1 | Faribault County Ditch | 1,000 | | 5 | 1,000 | 150.00 |
| 1 | Harvey School Dist. #38 (Wells County, N.D.) | 1,000 | July 1, '42 | 6 | 1,000 | 60.00 |
| 1 | County of Isanti Ditch | | | 6 | 1,000 | 60.00 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1 | LacQuiParle County Ditch | 1,000 | Feb. | 1, '38 | 5¾ | 1,000 | 57.50 |
| 1 | " " " | 1,000 | July | 1, '41 | 6 | 1,000 | 60.00 |
| 2 | Mahnomen County Road | 1,000 | June | 1, '31 | 6 | 2,000 | 120.00 |
| 3 | Meagher County, Mont., Road | 1,000 | July | 1, '33 | 5 | 3,000 | 150.00 |
| 1 | " " " " | 1,000 | July | 1, '36 | 5 | 1,000 | 50.00 |
| 2 | Pine County Sch. Dist. #24 | 1,000 | Sept. | 1, '36 | 7 | 2,000 | 140.00 |
| 3 | Polk County School #3 | 1,000 | May | 1, '35 | 6 | 3,000 | 180.00 |
| 1 | Redwood County Drainage | 1,000 | Dec. | 1, '31 | 6 | 1,000 | 60.00 |
| 2 | " " " | 1,000 | Dec. | 1, '34 | 6 | 2,000 | 120.00 |
| 1 | St. Louis County Road | 1,000 | Jan. | 1, '31 | 5½ | 1,000 | 55.00 |
| 2 | St. Louis County School #12 | 1,000 | | | 5 | 2,000 | 100.00 |
| 2 | Sibley County Ditch | 1,000 | Feb. | 1, '35 | 5¾ | 2,000 | 115.00 |
| 1 | S. Dak. Rural Credit (Series L of 1919) | 1,000 | June | 1, '32 | 5 | 1,000 | 50.00 |
| 2 | S. Dak. Rural Credit (Series C. of 1921) | 1,000 | Dec. | 1, '34 | 5½ | 2,000 | 110.00 |
| 3 | Steel County School #63 | 1,000 | May | 1, '35 | 5½ | 3,000 | 165.00 |
| 2 | Dakota County Special School District #1 (So. St. Paul) | 1,000 | Apr. | 1, '36 | 6 | 2,000 | 120.00 |
| 4 | Traverse County Road | 1,000 | Dec. | 1, '30 | 5¾ | 4,000 | 230.00 |
| 4 | Twin City Trading Co. | 1,000 | Apr. | 1, '28 | 5½ | 4,000 | 220.00 |
| 2 | Yellow Medicine Ditch | 1,000 | Jan. | 1, '34 | 5¾ | 2,000 | 115.00 |
| | " " Public Drainage Ditch | 200 | Nov. | 1, '25 | 5 | 200 | 10.00 |
| 1 | Mpls. Trust Joint Land Bank | 1,000 | May | 1, '52 | 5 | 1,000 | 50.00 |
| | Industrial and Public Utility Bonds: | | | | | | |
| 3 | Carolina, Clinchfield & Ohio Railway | 1,000 | Dec. | 15, '52 | 6 | 3,000 | 180.00 |
| 13 | Armour & Co., of Delaware | 1,000 | Jan. | 1, '43 | 5½ | 13,000 | 715.00 |
| 1 | Paducah Electric Co. | 1,000 | Jan. | 1, '38 | 6 | 1,000 | 60.00 |
| 25 | Island Warehouse Corporation 1st Mtg. 6's | 1,000 | Mar. | 1, '43 | 6 | 25,000 | 1500.00 |

17 Farm Mortgages

| | Name | Rate | Amount | Annual Return |
|---|---|---|---|---|
| No. 10007 | Norem | 5% | $6,000.00 | 300.00 |
| 12795 | Severson | 5½ | 10,000.00 | 550.00 |
| 12003 | Zieladorf | 5½ | 5,000.00 | 275.00 |
| 7639 | Ekkrehagen | 6 | 1,500.00 | 90.00 |
| | D. F. Brooks Note | 5½ | 5,500.00 | 302.50 |

Stocks

| | | | | | |
|---|---|---|---|---|---|
| | | | | (about) | |
| 1324.98 | Shares of Douglas Securities Co., Capital Stock | 132,498.00 | 5% | $6624.90 | |
| 150 | " " Canadian Elevator Co., Pfd. Stock | 15,000.00 | 7% | 1050.00 | |
| 200 | " " American Cotton Fabric Co., Pfd. Stock | 20,000.00 | 7% | 1400.00 | |
| 83 | " " Piper Howe Lumber Co., Pfd. Stock | 8,300.00 | 10% | 830.00 | |
| 62 | " " First National Bank Capital Stock | 15,500.00 | 14% | 868.00 | |
| 100 | " " Commercial Acceptance Trust Co. Pfd. | 10,000.00 | 7% | 700.00 | |
| 50 | " " McCall Corp., Pfd. | 5,000.00 | 7% | 350.00 | |

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## Exhibit II.

Whereas under date of September 12th, 1923, Edward Bruce Douglas entered into an agreement with Minneapolis Trust Company as Trustee for the benefit of Ida M. Douglas, and

Whereas First Minneapolis Trust Company is the successor by consolidation to Minneapolis Trust Company, and

Whereas said agreement provided for the payment of Twenty-one Thousand Dollars ($21,000) a year to Ida M. Douglas, beginning November 6th, 1927, and the transfer to cover said payment, of approximately $120,000 par value of securities, and

Whereas said Edward Bruce Douglas has selected certain securities to be added to said trust fund, more particularly described in Exhibit A hereto attached and made a part hereof, which list of securities have been approved by the Trustee,

Now Therefore in consideration of the transfer of such securities the Trustee agrees to hold the same pursuant to the terms, conditions and provisions and covenants of said agreement dated December 12th, 1923.

In Witness Whereof the party of the first part has hereunto set his hand and seal and the party of the second part has caused these presents to be executed and its corporate seal to be hereunto affixed this 10th day of December, 1927.

EDWARD BRUCE DOUGLAS.

Signed, Sealed and Delivered
in the presence of:
Robert Baldwin
P. J. Hubbard

FIRST MINNEAPOLIS TRUST COMPANY, successor by consolidation to
MINNEAPOLIS TRUST COMPANY,
By A. B. Whitney, Its Vice President.

Attest: H. VERDELIN,
Its Assistant Secretary.
(Corporate Seal)

H. J. Kuhlman
C. Ryan

19 State of New York,
County of New York—ss.

On this 23 day of Jan., 1928, before me, a Notary Public within and for said county and state personally appeared Edward Bruce Douglas to me personally known to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.

P. J. HUBBARD,
Notary Public Queens County 804
Register's Queens County No. 3562
(Notarial Seal) County Clerk's N. Y. County No. 567
Register's Number N. Y. County No. 9416
Commission expires March 30th, 1929.

State of Minnesota,
County of Hennepin—ss.

On this 10th day of December, 1927, before me a notary public within and for said county, personally appeared A. B. Whitney and H. Verdelin to me personally known, who, being by me duly sworn, did say that they are the Vice President and Assistant Secretary respectively, of First Minneapolis Trust Company, successor by consolidation to Minneapolis Trust Company, the corporation named in the foregoing instrument and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors and said A. B. Whitney and said H. Verdelin acknowledged said instrument to be the free act and deed of said corporation.

H. J. KUHLMAN,
(Notarial Seal) Notary Public, Hennepin County, Minn.
My Commission expires July 16th, 1931.

| Nos. | Description | Rate | Due | Coupons maturing | & Subsequent attached | Par Value |
|---|---|---|---|---|---|---|
| 136/8 | City of Bend, Oregon | | | | | |
| 125,121/2 | General Obligation Water Bond | 5½ | 9/ 1/34 | 3/1/28 | " | 6000. |
| 56/60 | Carlton Co. Minn. Road Bonds | 6 | 7/ 1/30 | 1/1/28 | " | 5000. |
| 2 | Chippewa Co. Minn. | | 11/ 1/28 | | | |
| 18 | Public Drain. Ditch Bond | 6 | 11/ 1/29 | 5/1/28 | " | 2000. |
| 30 | Chippewa Co. Minn. | | | | | |
| 28,29 | School Bond | 6 | 9/ 1/36 | 3/1/28 | " | 2000. |
| M8286/90 | Cleveland Electric Illuminating Co. Gen. Mtg. Gold Bond Ser. B | 5 | 10/ 1/61 | 4/1/28 | " | 5000. |
| M88913/5 M26485 69383 M91399 M91400 M57979 | Great Northern Railway Co. General Mtg. Gold Bond, Series A | 7 | 7/ 1/36 | 1/1/28 | " | 8000. |
| 1289-90 1291/2, 1306 | Marquette, Houghton & Ontonagon Ry. Co. Mtg. Bond | 6 | 4/ 1/35 | 4/1/28 | " | 5000. |
| 806/10 | Minneapolis Gas Light Co. Secured Gold Note | 6 | 2/ 1/30 | 2/1/28 | " | 5000. |
| 721/5 | Minneapolis, St. Paul & Sault Ste. Marie Ry. Co. Equip. Trust. Ser. M | 4½ | 11/ 1/33 | 5/1/28 | " | 5000. |
| 1729/33 | Buffalo Creek R. R. Co. 1st and Ref. Mtg. Coupon Gold Bond | 5 | 1/ 1/61 | 1/1/28 | " | 5000. |
| M4787/89 | Bell Tel Co. of Pa, | 5 | 10/ 1/60 | 4/1/28 | " | 3000. |
| 7887,7889 | Burlington, Cedar Rapids & Northern Ry. Co. Iowa, Minn. & Dakota Div. 1st Mtg. Consolidated Bond | 5 | 4/ 1/34 | 4/1/28 | " | 2000. |
| 1896 | Minnesota Transfer Ry. Co. 1st Mtg. Gold Bond | 5 | 8/ 1/46 | 2/1/28 | " | 1000. |
| M2568/72 | Montgomery Ward Properties 1st Mtg. Gold Bond | 5 | 5/ 1/46 | 5/1/28 | " | 5000. |
| M2593/4 M3880 M3697/8 | New Orleans, Texas & Mexico Ry. Co. 1st Mtg. Gold Bond, Series C | 5 | 8/ 1/56 | 2/1/28 | " | 5000. |
| M948/52 | Otter Tail Power Co. Gen. Mtg. Gold Bond, Ser. D. | 5½ | 1/ 1/45 | 1/1/28 | " | 5000. |
| 21 M978/80 | Otter Tail Power Co. Gen. Mtg. Gold Bond. Ser. E | 5 | 10/ 1/46 | 4/1/28 | " | 3000. |
| M17999 | Pacific Fruit Express Co. Equip. Trust Ser. A | 7 | 6/ 1/32 | 6/1/28 | " | 1000. |
| 19/26 | Philadelphia Suburban Counties Gas & Elec. Co. 1st and Refunding Mtg. Gold Bond | 4½ | 5/ 1/57 | 5/1/28 | " | 8000. |
| M2338/42 | Powell River Co. Ltd Serial Gold Note | 5 | 2/ 1/31 | 2/1/28 | " | 5000. |
| D103/5, D118 | St. Paul Gas Light Co. General and Refunding Mtg. Gold Bond, Ser. B | 5½ | 6/ 1/54 | 6/1/28 | " | 7000. |
| 233/240 249/50 | St. Paul Union Depot Co. Consolidated Mtg. Bond | 4 | 5/ 1/44 | 5/1/28 | " | 10000. |
| M10831/35 | Southwestern Gas & Electric Co. 1st Mtg. Gold Bond, Series A | 5 | 1/ 1/57 | 7/1/28 | " | 5000. |
| M187 | Stimson Building, First Mortgage Gold Bond | 6 | 2/ 1/36 | 2/1/28 | " | 1000. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | [illegible] | Great Northern Railway | | | | | |
| | 60383<br>M91399<br>M91400<br>M57979 | Co. General Mtg. Gold Bond, Series A | 7 | 7/ 1/36 | 1/1/28 | " | 8000. |
| | 1289-90<br>1291/2,<br>1306 | Marquette, Houghton & Ontonagon Ry. Co. Mtg. Bond | 6 | 4/ 1/35 | 4/1/28 | " | 5000. |
| | 806/10 | Minneapolis Gas Light Co. Secured Gold Note | 6 | 2/ 1/30 | 2/1/28 | " | 5000. |
| | 721/5 | Minneapolis, St. Paul & Sault Ste. Marie Ry. Co. Equip. Trust. Ser. M | 4½ | 11/ 1/33 | 5/1/28 | " | 5000. |
| | 1729/33 | Buffalo Creek R. R. Co. 1st and Ref. Mtg. Coupon Gold Bond | 5 | 1/ 1/61 | 1/1/28 | " | 5000. |
| | M4787/89 | Bell Tel Co. of Pa. | 5 | 10/ 1/60 | 4/1/28 | " | 3000. |
| | 7887,7889 | Burlington, Cedar Rapids & Northern Ry. Co. Iowa, Minn. & Dakota Div. 1st Mtg. Consolidated Bond | 5 | 4/ 1/34 | 4/1/28 | " | 2000. |
| | 1896 | Minnesota Transfer Ry. Co. 1st Mtg. Gold Bond | 5 | 8/ 1/46 | 2/1/28 | " | 1000. |
| | M2568/72 | Montgomery Ward Properties 1st Mtg. Gold Bond | 5 | 5/ 1/46 | 5/1/28 | " | 5000. |
| | M2593/4<br>M3880<br>M3697/8 | New Orleans, Texas & Mexico Ry. Co. 1st Mtg. Gold Bond, Series C | 5 | 8/ 1/56 | 2/1/28 | " | 5000. |
| | M948/52 | Otter Tail Power Co. Gen. Mtg. Gold Bond, Ser. D. | 5½ | 1/ 1/45 | 1/1/28 | " | 5000. |
| 21 | M978/80 | Otter Tail Power Co. Gen. Mtg. Gold Bond. Ser. E | 5 | 10/ 1/46 | 4/1/28 | " | 3000. |
| | M17999 | Pacific Fruit Express Co. Equip. Trust Ser. A | 7 | 6/ 1/32 | 6/1/28 | " | 1000. |
| | 19/26 | Philadelphia Suburban Counties Gas & Elec. Co. 1st and Refunding Mtg. Gold Bond | 4½ | 5/ 1/57 | 5/1/28 | " | 5000. |
| | M2338/42 | Powell River Co. Ltd Serial Gold Note | 5 | 2/ 1/31 | 2/1/28 | " | 5000. |
| | D103/5,<br>D118 | St. Paul Gas Light Co. General and Refunding Mtg. Gold Bond, Ser. B | 5½ | 6/ 1/54 | 6/1/28 | " | 7000. |
| | 233/240<br>249/50 | St. Paul Union Depot Co. Consolidated Mtg. Bond | 4 | 5/ 1/44 | 5/1/28 | " | 10000. |
| | M10831/35 | Southwestern Gas & Electric Co. 1st Mtg. Gold Bond, Series A | 5 | 1/ 1/57 | 7/1/28 | " | 5000. |
| | M187 | Stimson Building, First Mortgage Gold Bond | 6 | 2/ 1/36 | 2/1/28 | " | 1000. |
| | M355/59 | Tri State Land Co. 1st Mtg. Serial Gold Bond | 5½ | 5/ 1/39 | 5/1/28 | " | 5000. |
| | 576/9 | Twin City Trading Co. 1st Mtg. Gold Bond | 5½ | 4/ 1/28 | 4/1/28 | " | 4000. |
| | M2246<br>M2205<br>M1063/64 | Union Trust Bldg. 1st Mtg. Leasehold Serial Gold Bond | 5½ | 12/ 1/45<br>12/ 1/38 | 6/1/28 | " | 4000. |
| | 3478/82 | Utica Gas & Electric Co. 30 Yr. General Mtg. Gold Bond, Ser. D. | 5 | 4/ 1/56 | 4/1/28 | " | 5000. |
| | | | | | | | $128000.00 |

22 Exhibit III.

This Agreement Made in triplicate this 16 day of March, A. D. 1928, by and between Edward B. Douglas, of Deephaven, Hennepin County, Minnesota, party of the first part, and First Minneapolis Trust Company, a corporation under the laws of the State of Minnesota, with its principal place of business in the City of Minneapolis, as Trustee (and hereinafter for brevity sometimes called the "Trustee"), party of the second part, and Florence S. Douglas, wife of the party of the first part, party of the third part,

Witnesseth As Follows:

That in consideration of one (1.00) dollar and other valuable consideration to the party of the first part paid by the party of the second part, the receipt and sufficiency whereof are hereby acknowledged, the party of the first part hereby grants, bargains, sells, assigns, conveys, transfers and sets over unto the party of the second part, as Trustee, all those certain securities and items of property, specifically described and set forth in a schedule marked Exhibit "A" hereto attached and hereby made a part hereof, and the party of the first part may at any time hereafter, if he so elect, transfer and convey by proper instrument and deliver to the party of the second part, as Trustee hereunder, other items of property and any property so hereafter transferred, conveyed and delivered shall be described in a supplementary receipt executed by the party of the second part and shall be held by it under the terms of this agreement in the same manner as if such property had been included in the transfer and conveyance evidenced by this agreement. All of the property described in said Exhibit "A" and all property, if any, so hereafter conveyed to the party of the second part as Trustee hereunder, together with all changes therein and investments or reinvestments of items thereof hereafter made, is hereinafter designated as the "Trust Estate".

To Have and To Hold the said Trust Estate with all the privileges and appurtenances thereunto belonging to the party of the second part as Trustee, its successors and assigns, for its and their use, but in trust nevertheless as follows, and subject to the following conditions:

The Trustee shall hold, manage and control the Trust Estate until maturity or prior redemption of the various items thereof, or until a sale or sales of any of the various items thereof be deemed advisable by it after due investigation, or until termination of this trust in

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accordance with the terms hereof; shall invest and reinvest the principal proceeds arising therefrom in property as hereinafter provided; shall collect, receive and receipt for the income, interest and profits arising therefrom; and shall apply and distribute the income and principal as follows:

First. From the net income arising therefrom the Trustee shall pay from time to time when and as the same shall become payable, the premiums on those certain two life insurance policies on the life of the party of the first part, aggregating in amount of insurance $65,000 and one-fifth (1/5) of the premium on the life insurance policy on the life of the party of the first part in the amount of $10,000, which policies are listed in Exhibit "B" hereto attached, and hereby made a part hereof, and shall pay the remaining net income therefrom unto Florence S. Douglas, party of the third part, in monthly installments as equal as possible, as long as she shall live, commencing the first day of April, 1928, without regard to any change of status of party of the third part.

Upon the decease of said Florence S. Douglas, the Trustee shall distribute from said Trust Estate items thereof, selected by the Trustee, in an amount aggregating at their then fair market value as determined by the Trustee, the sum of $217,000 to the person or persons designated to receive the same or entitled to receive the same by the provisions of or in accordance with the terms of the last Will of said Florence S. Douglas, or in the absence of a will of said Florence S. Douglas disposing thereof, then to her then living heirs at law, determined according to the [interstate] laws of the State of Minnesota then in force, and the residue of said Trust Estate after the distribution of said items aggregating in value $217,000 as aforesaid, shall then be transferred, set over, delivered and distributed by said Trustee to said Edward B. Douglas, if he be then living, but if he be then deceased, said residue shall be distributed by said Trustee to the person or persons designated to receive the same or entitled to receive the same by the provisions of or in accordance with the terms of the last will of said Edward
24 B. Douglas, or in the absence of a will of said Edward B. Douglas disposing thereof, then to his then living heirs at law, determined according to the intestate laws of the State of Minnesota then in force.

The party of the first part shall, immediately upon the execution of this agreement, cause the insurance policies listed in Schedule "B" to be changed so that the beneficiary in each of said policies shall be Florence S. Douglas abso-

lutely, without power of change of beneficiary reserved to the party of the first part during the lifetime of the party of the third part, except that as to the policy in the amount of $10,000, the change of beneficiary, as aforesaid, shall be to the extent of one-fifth thereof in the name of Florence S. Douglas, as aforesaid. In the event that the party of the first part shall fail or refuse to make such change of beneficiary, or in the event that the policies lapse or are cancelled for any reason other than the nonpayment of premiums thereon, then upon the decease of said Florence S. Douglas, the party of the second part shall distribute in the manner and to the persons designated by the said Florence S. Douglas in her will or in the event that she die without leaving a last will, then to the persons who are her then living heirs at law determined according to the intestate laws of the State of Minnesota then in force, the sum of $284,000 in lieu of $217,000 as therein provided. If any one or more of the said policies are not so changed or lapse or are cancelled, other than for the nonpayment of premiums, then the sum of $217,000 mentioned in said paragraph to be distributed upon the death of Florence S. Douglas, shall be increased by the sum represented by such policy or policies which have not been changed as aforesaid or have lapsed or have been cancelled.

Second. By the term "net income" hereunder shall be meant the income and interest arising from said Trust Estate, exclusive of the profits realized from the sale of any of the items thereof and exclusive of stock dividends (such profits and stock dividends being counted a part of the principal thereof, to be added thereto) and less any necessary charges and expenses paid or incurred in connection with the management and protection of the Trust Estate and the Trustee's proper compensation for its services hereunder.

Third. The property constituting said Trust Estate shall be held in the name of the party of the second part as Trustee under this agreement and shall constantly be shown on its books and records to be a part of said Trust Estate, and all funds belonging thereto shall be deposited in its name as Trustee.

Fourth. The party of the first part during his lifetime and the party of the third part shall have access at all reasonable times to the books and records of the party of the second part insofar as they relate to said Trust Estate and the Trustee shall, during the month of March each year,

make a written report as to the condition of said Trust Estate to the party of the first part during his lifetime and to the party of the third part hereunder, said report to contain a complete inventory and description of the securities and properties belonging to said Trust Estate and a complete statement of the principal and income, receipts and disbursements in connection therewith.

Fifth. This trust can be amended or revoked only upon receipt by the party of the second part of written notice delivered to the Trustee of such amendment or revocation signed and acknowledged before a notary public or other officer authorized under the laws of the State of Minnesota to take acknowledgments by both the party of the first part and the party of the third part, which notice may be contained in one instrument signed and acknowledged by both parties, or in two concurrent instruments, one signed and acknowledged by the party of the first part and one by the party of the third part.

Sixth. The Trustee may, at the risk of the Trust Estate, continue to hold any property listed in said Exhibit "A" although the same shall not be of the character authorized by the laws of the State of Minnesota for trust investments, and it shall likewise have full power and authority to sell, dispose of, call in and change any of the same and any securities or other items that may at any time or from time to time constitute a part of said Trust Estate, and to invest and reinvest the Trust Estate in any income producing property which in its discre-
26 tion may be deemed safe and for the best interests of the Trust Estate, and the Trustee shall not be restricted to securities of the character authorized by the laws of the State of Minnesota for trust investments.

Seventh. The party of the second part as Trustee may consent to the extension, reorganization, or reincorporation of any corporation, stock in which may at any time form a part of the Trust Estate and may accept in lieu of such stock the stock of any reorganized or reincorporated corporation, and the said Trustee shall have the same power with respect to any stock at any time forming a part of the Trust Estate as the absolute owner of such stock would have and shall exercise the same judgment and discretion as owners acting for themselves, and in case of any insolvency or foreclosure in which the Trust Estate may have an interest, the Trustee may participate or join in any creditors' agreement or place the interest of the Trust Estate in the hands of

any reorganization committee and in such case the Trustee may participate in any syndicate or other arrangement and may take and hold any form of property for the purpose of protecting the interests of the Trust Estate therein.

Eighth. The party of the second part as Trustee shall have and it is hereby given full power and authority to collect and receive all sums of money when and as they may become due by the terms of or under or by reason of the evidences of indebtedness and other instruments now or hereafter constituting a part of said Trust Estate; to invest and reinvest the same in such property as aforesaid; to sell and assign all of said property and any that may at any time become a part of said Trust Estate or come into its hands pursuant hereto, to sell, convey, demise, let, lease, ground lease, or exchange any real estate which may at any time become a part of said Trust Estate, investing and reinvesting in properties as aforesaid the principal proceeds from the sale thereof as the same are received by it from time to time; and to make, execute and deliver any and all instruments necessary or incidental to the proper carrying out of this agreement in every respect.

Ninth. The party of the second part as Trustee shall receive for its services in collecting interest, income and profits hereunder, in making disbursements as authorized herein, in accounting as aforesaid, and in investing and reinvesting funds, 3% of the income collected from all securities and property hereby or hereafter assigned to it and from all investments and reinvestments of trust funds hereunder made by it, and 1% of the principal distributed upon final distribution thereof, it being understood that the party of the second part may purchase through its investment departments with the principal funds belonging to said Trust Estate securities of the kind herein authorized as they may be offered to the public without affecting its right to the compensation above specified for its services as Trustee.

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Tenth. No title in this Trust Estate or in the income therefrom shall vest in the party of the third part, and neither the principal nor the income of the Trust Estate shall be liable for the debts of the party of the third part, and she shall not have any powers to sell, assign, transfer, encumber, or in any other manner to anticipate or dispose of any interest in the Trust Estate (except as hereinbefore provided) or in the income produced thereby, prior to the actual distribution thereof to her by the Trustee.

Eleventh. The party of the first part hereby discloses to the party of the third part that immediately prior to the execution of this agreement he was the sole owner of and possessed of the immediate enjoyment of properties as hereinafter described or referred to; that the party of the first part is hereby making disposition of all of said assets as follows:

(1) By the conveyance under the terms hereof of the property described in the attached schedule marked Exhibit "A".

(2) By the conveyance to First Minneapolis Trust Company, as Trustee, of the property described in an agreement of even date herewith by and between the same parties as are parties to this agreement and by the terms of which party of the first part is the principal beneficiary thereunder.

(3) By the conveyance to First Minneapolis Trust Company, as Trustee, of the property described in an agreement of even date herewith between the party of the first part and said First Minneapolis Trust Company as Trustee under the terms of which Edward L. Camp and William E. Douglas are the two present principal beneficiaries.

(4) By the payment of existing debts of the party of the first part and of the party of the third part aggregating approximately $105,000.00 in amount, such payments to be made contemporaneously with the execution hereof or as soon thereafter as possible.

28 The party of the first part further discloses to the party of the third part that by the terms of an agreement dated September 12, 1923, by and between the party of the first part, Ida M. Douglas and Minneapolis Trust Company, as Trustee, the party of the first part, his heirs or assigns, will upon the death of Ida M. Douglas, receive certain properties described therein; that in the event that the party of the first part outlives Mahala D. Douglas, of Deephaven, Minnesota, the party of the first part will receive the property and home known as "Waldon" in the Village of Deephaven, Minnesota; and that the party of the first part may hereafter inherit properties of an indeterminable value from Mahala D. Douglas. The party of the first part declares that he has no property whatsoever other than the foregoing except only his personal belongings, such as clothing, jewelry, furniture, furnishings and an automobile.

The party of the third part acknowledges receipt of schedules describing in detail all of the properties conveyed by said three above described trust agreements, dated this date, and further acknowledges receipt of a detailed list of the securities now held by First Minneapolis Trust Company, as Trustee under said agreement dated September 12, 1923, and acknowledges that she is acquainted with and knows the present values of all of the property of party of the first part as hereinbefore described or referred to.

The party of the third part joins herein and has executed this indenture for the purpose, among others, of evidencing her consent to and approval of the terms hereof and she does hereby consent to and approve of the same, and she hereby grants, bargains, sells, assigns, conveys, transfers and sets over unto the party of the second part, as Trustee hereunder, all of her right, title and interest, if any, in and to all of the property described in the schedule hereto attached and marked Exhibit "A" and hereby conveyed. It is hereby agreed by and between the party of the first part and the party of the third part that the provisions herein made for the party of the third part are in lieu of, and in full settlement of, any and all dower right or rights in lieu of dower or statutory interests in the estate of the party of the first part as the same shall exist upon his decease,
29 whether now owned or hereafter acquired; and it is further agreed by and between the party of the first part and party of the third part that in the event that the party of the first part and the party of the third part shall hereafter be divorced or legally separated, the provisions herein made for her are in lieu of, and in full settlement of, any and all right to or claims for alimony, suit moneys, and attorney's fees and of any and all rights to or claims for separate maintenance and allowance for her support. The party of the third part further agrees to pay all debts and other obligations incurred by her after the date hereof whether for the purchase of necessities or for other purposes, and agrees to save the party of the first part harmless from any and all liabilities arising out of debts contracted or obligations incurred after the date hereof for any purposes whatsoever by the party of the third part.

Twelfth. In the event that an additional Federal income tax for the year 1926 or 1927, or both, shall be assessed against the party of the first part, individually or as co-trustee or otherwise, the party of the second part shall pay one-half (½) of such additional taxes assessed from the income of the Trust Estate to the extent that one-half of such addi-

tional taxes does not exceed $2500, and if one-half of such additional taxes exceeds the sum of $2500 then to the extent of such excess said one-half of such additional taxes shall be paid from the principal of the Trust Estate.

Thirteenth. Florence S. Douglas, party of the third part, agrees that she will at any time or times during the period of her lifetime, upon request of the party of the first part, execute and deliver to the party of the first part, or his agents, any and all deeds, mortgages or other instruments affecting the title to any real estate wheresoever situated and now or hereafter owned by the said Edward B. Douglas or in which he may now or hereafter have any right, title or interest for the purpose of conveying or mortgaging, as the case may be, her interest therein by way of dower or created by statute. Such deeds or mortgages shall, however, be in such form as not to obligate the party of the third part by reason of the terms thereof by any express warranties whatsoever or for the payment of any sums of money.

In the event that the party of the third part at any time during the existence of this trust refuses to execute any deeds or mortgages in the manner hereinabove in this section set forth, or fails so to do within sixty (60) days after receipt by her of a request for the execution of such instrument, together with the forms of such instruments, and fails to deliver the same to the party of the first part or his agents or to deposit the same in the post office at or nearest to the place at which she shall be at the time of the execution of such instrument, with postage prepaid and addressed to the party of the first part, in care of First Minneapolis Trust Company, Minneapolis, Minnesota, within said period of sixty (60) days, then and in any such event the party of the second part shall withhold all sums payable to the party of the third part under this trust agreement until and if she shall execute and deliver each such instrument so requested and shall pay all damages, if any, arising out of her failure or neglect to execute and deliver such instruments pursuant to the provisions of this section.

In Witness Whereof the party of the first part and the party of the third part have hereunto set their respective hands and seals and the party of the second part has

caused this instrument to be executed by its proper officers and its corporate seal to be hereunto affixed the day and year first above written.

EDWARD B. DOUGLAS, (Seal)

FIRST MINNEAPOLIS TRUST COMPANY,
By William J. Stevenson,
Vice-President.
By H. Verdelin, Secretary.

FLORENCE S. DOUGLAS, (Seal)

In the presence of:
J. H. Colman,
Charles R. Miller,
J. H. Colman, ) as to
J. C. Fink ) F. S. D.

31 State of Minnesota,
County of Hennepin—ss.

On this 16 day of March, A. D. 1928, before me a Notary Public within and for said County, personally appeared Edward B. Douglas, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

CHARLES R. MILLER,
Notary Public, Hennepin County, Minn.

My commission expires July 2, 1929.

State of Minnesota,
County of Hennepin—ss:

On this 16th day of March, A. D. 1928, before me, a Notary Public within and for said County, personally appeared William J. Stevenson and H. Verdelin, to me personally known, who, being each by me duly sworn each did say that they are respectively the Vice-President and Ass't Secretary of First Minneapolis Trust Company, the corporation named in the foregoing instrument; that the seal affixed to said instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and said William J. Stevenson and H. Verdelin acknowledged said instrument to be the free act and deed of said corporation.

CHARLES R. MILLER,
Notary Public, Hennepin County, Minn.

My Commission expires July 2, 1929.

State of Minnesota,
County of Hennepin—ss:

On this 16 day of March, A. D. 1928, before me a Notary Public within and for said County, personally appeared Florence S. Douglas, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

CHARLES R. MILLER,
Notary Public, Hennepin County, Minn.

My Commission expires July 2, 1929.

32 State of Minnesota,
County of Hennepin—ss.

I, H. V. Bruchholz, Secretary Of First Minneapolis Trust Company, do hereby certify that the within instrument is a true and correct copy of the original Trust Agreement entered into by and between Edward B. Douglas and First Minneapolis Trust Company, and Florence S. Douglas: and that said trust agreement is in full force and effect; and that First Minneapolis Trust Company is now acting as trustee thereunder.

(Corporate Seal) H. V. BRUCHHOLZ.

Subscribed and sworn to before me this 7th day of Nov. 1929.

(Notarial Seal) PAUL REYERSON,
Notary Public, Hennepin County, Minn.

My Commission Expires Oct. 10th, 1933.

Exhibit A

Statement of Property

| Par Value | Description | Rate | Interest payable | Interest paid to | Maturity | Cost or Appraised Value |
|---|---|---|---|---|---|---|
| Mortgages | | | | | | |
| $2500.00 | Anderson Otto #12719 | 5½% | Sept 1 | 9- 1-26 | 8- 1-29 | $ 2500.00 |
| 6000.00 | Dokkebakken Ole #11999 | 5½% | Dec 1 | 12- 1-26 | 10- 9-28 | 6000.00 |
| 5500.00 | Sanden Claire M. #12132 | 5½% | Nov 1 | 11- 1-27 | 11- 1-28 | 5500.00 |
| 10000.00 | Voght John #12029 | 5½% | Nov 1 | 11- 1-26 | 11- 1-28 | 10000.00 |
| Bonds | | | | | | |
| 2000.00 | Armour, So. Dak. City of Waterworks | 5% | Jan 1<br>July 1 | 1- 1-28 | 7- 1-39 | 2093.10 |
| 1000.00 | Bayport, Minn. Village of Funding | 5% | Apr 1<br>Oct 1 | 10- 1-27 | 4- 1-39 | 1066.27 |
| 1000.00 | Bayport, Minn. Village of Funding | 5% | Apr 1<br>Oct 1 | 10- 1-27 | 4- 1-35 | 1033.60 |
| 1000.00 | Becker Co. Minn. Pub. Dr. ditch | 5¾% | June 1<br>Dec 1 | 12- 1-27 | 12- 1-37 | 1041.87 |
| 1000.00 | Bemidji, Minn. City of Bridge | 5% | Jan 1<br>July 1 | 1- 1-28 | 7- 1-34 | 1046.64 |
| 1000.00 | Blue Earth Co. Minn. Ditch | 6% | June 15<br>Dec 15 | 12-15-27 | 6-15-39 | 1138.80 |
| 1000.00 | Blue Earth Co. Minn. Pub. Dr. Ditch | 6% | June 15<br>Dec 15 | 12-15-27 | 6-15-39 | 1036.59 |
| 1000.00 | Cottonwood Co. Minn. Pub. Drainage Ditch | 5% | Feb 1<br>Aug 1 | 2- 1-28 | 2- 1-36 | 1077.06 |
| 1000.00 | Cottonwood Co. Minn. Drain Ref. | 5% | Mar 1<br>Sept 1 | 3- 1-28 | 9- 1-33 | 1019.72 |
| 1000.00 | Cottonwood Co. Minn. County Road | 5% | Mar 1<br>Sept 1 | 3- 1-28 | 9- 1-36 | 1036.19 |
| 5000.00 | Dodge County, Minn. Road. | 5% | June 1<br>Dec 1 | 12- 1-27 | 12- 1-30 | 4908.38 |
| 2000.00 | Dodge County, Wisc. Highway | 5% | Apr 1<br>Oct 1 | 10- 1-27 | 4- 1-34 | 2064.40 |
| 1000.00 | Faribault County, Minn. Co. Drainage Ditch | 5% | Jan 1<br>July 1 | 1- 1-28 | 7- 1-36-37 | 1044.42 |
| 1000.00 | Freeborn County, Minn. Drain. Bond | 5% | Apr 1<br>Oct 1 | 10- 1-27 | 10- 1-31 | 1013.15 |
| 2000.00 | Goodhue County, Minn. Trunk Highway | 5½% | Mar 15<br>Sept 15 | 3-15-28 | 9-15-35 | 2027.21 |
| 2000.00 | Grand Forks, N. D. City of Refunding | 5% | May 1<br>Nov 1 | 11- 1-27 | 5- 1-33 | 2023.00 |
| $2000.00 | Hardeman County, Texas Road | 5% | May 11<br>Nov 11 | 11-11-27 | 5-11-33 | $2052.54 |
| 1000.00 | Hardeman County, Texas Road | 5% | May 11<br>Nov 11 | 11-11-27 | 5-11-49 | 1055.45 |
| 1000.00 | Harveys/D #38 North Dak. School Bldg. | 6% | Jan 1<br>July 1 | 1- 1-28 | 7- 1-42 | 1092.20 |
| 1000.00 | Isanti County, Minn. Pub. Ditch | 6% | June 1<br>Dec. 1 | 12- 1-27 | 6- 1-40 | 914.82 |
| 2000.00 | Kimball Ind. Cons. S/D #2 Brule Co. S. D. School | 5% | Feb. 15<br>Aug. 15 | 2-15-28 | 2-15-43 | 2000.00 |
| 5000.00 | Latimer County, Okla. Road | 5¼% | June 1<br>Dec 1 | 12- 1-27 | 6- 1-47 | 5318.75 |
| 2000.00 | Lenoir Co. N. C. Road and Bridge | 5½% | Apr 1<br>Oct 1 | 10- 1-27 | 4- 1-33 | 2103.89 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | Ref. | 5% | Sept 1 | | | |
| | 1000.00 | Cottonwood Co. Minn. County Road | 5% | Mar 1<br>Sept 1 | 3- 1-28 | 9- 1-36 | 1036.19 |
| | 5000.00 | Dodge County, Minn. Road. | 5% | June 1<br>Dec 1 | 12- 1-27 | 12- 1-30 | 4908.38 |
| | 2000.00 | Dodge County, Wisc. Highway | 5% | Apr 1<br>Oct 1 | 10- 1-27 | 4- 1-34 | 2064.40 |
| | 1000.00 | Faribault County, Minn. Co. Drainage Ditch | 5% | Jan 1<br>July 1 | 1- 1-28 | 7- 1-36-37 | 1044.42 |
| | 1000.00 | Freeborn County, Minn. Drain. Bond | 5% | Apr 1<br>Oct 1 | 10- 1-27 | 10- 1-31 | 1013.15 |
| | 2000.00 | Goodhue County, Minn. Trunk Highway | 5½% | Mar 15<br>Sept 15 | 3-15-28 | 9-15-35 | 2027.21 |
| | 2000.00 | Grand Forks, N. D. City of Refunding | 5% | May 1<br>Nov 1 | 11- 1-27 | 5- 1-33 | 2023.00 |
| 34 | $2000.00 | Hardeman County, Texas Road | 5% | May 11<br>Nov 11 | 11-11-27 | 5-11-33 | $2052.54 |
| | 1000.00 | Hardeman County, Texas Road | 5% | May 11<br>Nov 11 | 11-11-27 | 5-11-49 | 1055.45 |
| | 1000.00 | Harveys/D #38 North Dak. School Bldg. | 6% | Jan 1<br>July 1 | 1- 1-28 | 7- 1-42 | 1092.30 |
| | 1000.00 | Isanti County, Minn. Pub. Ditch | 6% | June 1<br>Dec. 1 | 12- 1-27 | 6- 1-40 | 914.82 |
| | 2000.00 | Kimball Ind. Cons. S/D #2 Brule Co. S. D. School | 5% | Feb. 15<br>Aug. 15 | 2-15-28 | 2-15-43 | 2000.00 |
| | 5000.00 | Latimer County, Okla. Road | 5¼% | June 1<br>Dec 1 | 12- 1-27 | 6- 1-47 | 5318.75 |
| | 2000.00 | Lenoir Co. N. C. Road and Bridge | 5½% | Apr 1<br>Oct 1 | 10- 1-27 | 4- 1-33 | 2103.89 |
| | 1000.00 | S. D. High, City of Los Angeles, Calif. Election | 5% | Feb. 1<br>Aug 1 | 2- 1-28 | 8- 1-46 | 1078.95 |
| | 3000.00 | Lyon County, Minn. Road | 5¼% | June 1<br>Dec 1 | 12- 1-27 | 12- 1-30 | 3036.93 |
| | 2000.00 | Meagher County, Mont. Road | 5% | Jan 1<br>July 1 | 1- 1-28 | 7- 1-33 | 1801.93 |
| | 2000.00 | Mercer County, N. Dak. Funding | 5½% | June 1<br>Dec 1 | 3- 1-27 | 6- 1-33 | 2046.05 |
| | 5000.00 | Miami, Okla. Board of Ed. School Bldg. | 5% | Mar. 1<br>Sept 1 | 3- 1-28 | 3- 1-43 | 5126.69 |
| | 4000.00 | Mpls. Trust Joint Stock Land Bank. Joint Farm Loan. | 5% | May 1<br>Nov 1 | 11- 1-27 | 5- 1-53 | 4040.00 |
| | 8000.00 | Mpls. Trust Joint Stock Land Bank. Farm Loan | 5% | May 1<br>Nov 1 | 11- 1-27 | 11- 1-52 | 8200.00 |
| | 1000.00 | Murray County, Minn. Jud. Ditch. | 5% | Apr 1<br>Oct 1 | 10- 1-27 | 10- 1-37 | 1021.80 |
| | 2000.00 | Marray County, Minn. Jud. Ditch | 5% | Apr 1<br>Oct 1 | 10- 1-27 | 10- 1-37 | 2130.90 |
| | 5000.00 | Oldham Ind. S/D #49 S. D. Bldg. | 5¼% | May 1<br>Nov 1 | 11- 1-27 | 5- 1-43 | 5221.51 |
| | 2000.00 | Prescott Pierce Co. Wisc. School Bldg. Bond S/D #1 | 5% | Mar 1<br>Sept 1 | 3- 1-28 | 3- 1-37 | 2080.00 |
| | 1000.00 | Pine County, Minn. cons. S/D #24 Funding | 7% | Mar 1<br>Sept 1 | 3- 1-28 | 9- 1-36 | 1067.50 |
| | 1000.00 | Polk Co. Minn. Ind S/D #3 | 6% | May 1<br>Nov 1 | 11- 1-27 | 5- 1-35 | 1022.41 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 35 | $2000.00 | Porto Rico Govt. Of Pub. Imprv. | 5% | Jan 1 July 1 | 1- 1-28 | 7- 1-51 | $2177.50 |
| | 1000.00 | Ramsey County, Minn. Road | 5% | Apr 1 Oct 1 | 10- 1-27 | 10- 1-33 | 1031.40 |
| | 17000.00 | Ramsey County, Minn. Road and Bridge | 4¾% | June 1 Dec 1 | 12- 1-27 | 6-1-42 | 17760.75 |
| | 1000.00 | Red Lake County, Minn. Refunding | 6% | Jan 1 July 1 | 1- 1-28 | 7- 1-40 | 1000.00 |
| | 1000.00 | Redwood Co. Minn. Pub. Dr. Ditch | 6% | June 1 Dec. 1 | 12- 1-27 | 12- 1-35 | 1042.20 |
| | 2000.00 | Renville County, Minn. Pub. Dr. Ditch | 5% | Feb. 1 Aug. 1 | 2- 1-28 | 2- 1-39 | 2052.80 |
| | 1000.00 | St. Cloud, Minn. Waterworks | 5% | Jan 1 July 1 | 1- 1-28 | 7- 1-39 | 1043.00 |
| | 2000.00 | St. Louis Co. Minn. Ind. S/D #12 | 5% | Mar 2 Sept 2 | 3- 2-28 | 9- 2-29 | 2004.53 |
| | 1000.00 | Sibley County, Minn. Pub. Dr. Ditch | 5¾% | Feb. 1 Aug. 1 | 2- 1-28 | 2- 1-35 | 1002.38 |
| | 2000.00 | State of Louisiana, Bossier Parrish, cons. road Dist. | 4½% | Mar 1 Sept 1 | 3- 1-28 | 3- 1-52 | 1970.60 |
| | 1000.00 | State of South Dakota Rur. credit Series L. | 5% | June 1 Dec 1 | 12- 1-27 | 6- 1-32 | 938.80 |
| | 6000.00 | Spencer Ind.-Cons. S/D #2 So. Dak. School Bldg. | 5% | Apr 1 Oct 1 | 10- 1-27 | 4- 1-43 | 6152.79 |
| | 1000.00 | Steele County, Minn. Ind. S/D #63 School Bond. | 5½% | May 1 Nov 1 | 11- 1-27 | 5- 1-35 | 1000.00 |
| | 1000.00 | Swift County, Minn. Road. | 6% | Feb. 1 Aug. 1 | 2- 1-28 | 8- 1-30 | 1024.28 |
| | 5000.00 | Swift County, Minn. Ditch | 5% | Apr 1 Oct 1 | 10- 1-27 | 4- 1-38 | 5153.30 |
| | 3000.00 | Thief River Falls, City of Elec. Light Impr. | 5½% | Apr 2 Oct 2 | 10- 2-27 | 10- 2-31 | 3169.40 |
| | 1000.00 | Traill County, N. Dak. | 5½% | Jan 1 July 1 | 1- 1-28 | 1- 1-36 | 1034.27 |
| | 1000.00 | Traverse County, Minn. Road | 5¾% | June 1 Dec 1 | 12- 1-27 | 12- 1-30 | 1016.15 |
| | 1000.00 | Wabasha County, Minn. Trunk Hgy. Reimbursement. | 5% | Mar 1 Sept 1 | 3- 1-28 | 9- 1-31 | 1027.83 |
| 36 | $7000.00 | Walworth Co. Wisc. Highway Imp. | 5% | Apr 1 Oct 1 | 10- 1-27 | 4- 1-33 | 7303.80 |
| | 2000.00 | Wilkin County, Minn. Highway | 5% | Mar 1 Sept 1 | 3- 1-28 | 9- 1-36 | $2047.53 |
| | 6000.00 | Wyndmere, N. Dakota School Bond Spec. S/D Bldg. | 5% | Jan 1 July 1 | 1- 1-28 | 6- 1-43 | 6075.95 |
| | 12000.00 | Zanesville, Ohio City Of School. | 5% | Apr 1 Oct 1 | 10- 1-27 | 10- 1-41 | 12000.00 |
| | Stock | | | Dividend Payable | Dividend paid to | No. Shs. | |
| | 11000.00 | Archer Daniels Midland Co. Pfd. at 100 a sh. | 7% | Feb. 1 May 1 Aug 1 Nov 1 | 2- 1-28 | 110 | $10780.00 |
| | | Archer Daniels Midland Co. Com. no par | | Feb 1 May 1 Aug 1 Nov 1 | 2- 1-28 | 250 | 9750.00 |
| | 7600.00 | The Canadian Elevator Co. Pfd. at 100 a sh. | 7% | Sept 1 | 9-19-27 | 76 | 7600.00 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 7600.00 | The Canadian Elevator Co. Pfd. at 100 a sh. | 7% | Sept 1 | | 9-19-27 | 76 | 7600.00 |
| | 22150.00 | The Canadian Elevator Co. Com. at 100. a sh. | | Sept. 1 | | 9-19-27 | 221½ | 22150.00 |
| | 22150.00 | The Canadian Elevator Co. Com. at 100 a sh. | | Sept 1 | | 9-19-27 | 221½ | 37250.00 |
| | 3100.00 | First National Bank Mpls. Cap at 100. a sh. | | Jan 1<br>Apr 1<br>July 1<br>Oct 1 | | 1- 1-28 | 31 | 8525.00 |
| | | McCall Corporation Com. no par. | | | | | 54 | 2160.00 |
| | | McCall Corporation Com. no par | | Feb 1<br>May 1<br>Aug 1<br>Nov 1 | | 2- 1-28 | 300 | 2750.00 |
| | | McCall Corporation Com. no par | | Feb 1<br>May 1<br>Aug 1<br>Nov 1 | | 2- 1-28 | 200 | 5000.00 |
| | 510.00 | McCall Corporation Com. | | Feb 1<br>May 1<br>Aug 1<br>Nov 1 | | 2- 1-28 | 17 | 510.00 |
| 37 | $ 735.00 | McCall Corporation. Com. no par. | | Feb 1<br>May 1<br>Aug 1<br>Nov 1 | | 2- 1-28 | 25 | $ 735.00 |
| | | Munsingwear Inc. Cap. no par | | Mar 1<br>June 1<br>Sept 1<br>Dec 1 | | 3- 1-28 | 250 | 10500.00 |
| | 12500.00 | Northern Elevator Co. Ltd. Cap. at 100. a sh. | | | | 6-30-27 | 125 | 5208.34 |
| | | National Bellas Hess Co. Inc. Com. at no par | | | | | 1023 | 34583.79 |
| | 12500.00 | The Northern Elevator Co. Ltd Cap. at 100. a sh. | | | | 6-26-27 | 125 | 12500.00 |
| | 7500.00 | Piper River Lumber Co. Com. at 100. a sh. | | | | 2-23-27 | 75 | 7500.00 |
| | | Quaker Oats Company Com. no par | | Jan 15<br>Apr 15<br>July 15<br>Oct 15 | | 1-15-28 | 1010 | 57969.13 |
| | 11800.00 | The Quaker Oats Co. Pfd. at 100. a sh. | | Mar 1<br>June 1<br>Sept 1<br>Dec 1 | | 3- 1-28 | 118 | 11800.00 |
| | | The Quaker Oats Co. Com. at 100. a sh. | | Jan 15<br>Apr 15<br>July 15<br>Oct 15 | | 1-15-28 | 1008 | 25450.00 |
| | | | | | | 6-23-27 | 126 | 12900.00 |
| | 12600.00 | Security Elevator Co. Ltd. Cap at 100. a sh. | | | | | | |
| | 8300.00 | The Winnipeg Elevator Co. Ltd. Cap. at 100. a sh. | | | | 9-14-27 | 83 | 8300.00 |
| | 8300.00 | Winnipeg Elevator Co. Cap. at 100. a sh. | | | | 9-15-27 | 83 | 11425.00 |

38 Schedule B

| Insurance | | Par Value |
|---|---|---|
| $ 50000.00 | Conn. Mutual Life Ins. Co. Pol. #465093 | $ 50000.00 |
| 15000.00 | N. W. Nat. Life Ins. Co. Pol. #175227 | 15000.00 |
| 2000.00 | N. W. Mutual Life Ins. Co. Pol. #1453487 (1/5 interest) | 2000.00 |

Exhibit IV





Form 843
Treasury Department
Internal Revenue Service
Revised June, 1930

Claim

To Be Filed With The Collector Where Assessment Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

| Collector's Stamp |
| --- |
| (Date received) |
| Received<br>Coll. of Int. Rev.<br>Dist. Minn.<br>Apr. 8 1931<br>St. Paul Office |

☐ Refund of Tax Illegally Collected.

☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

☐ Abatement of Tax Assessed (not applicable to estate or income taxes).

COPY
Original Claim Filed

State of Minnesota } ss.
County of Hennepin }

Name of taxpayer or purchaser of stamps Edward B. Douglas

Type or Print

Business address c/o First Minneapolis Trust Company, 115 S. Fifth St. Minneapolis, Minn.
(Street) (City) (State)

Residence.....

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed Minnesota

2. Period (if for income tax, make separate form for each taxable year) from January 1st, 1928, to December 31, 1928

3. Character of assessment or tax Income taxes

4. Amount of assessment, $2841.61; dates of payment March 30, 1931

5. Date stamps were purchased from the Government.....

6. Amount to be refunded 2841.61 $.....

7. Amount to be abated (not applicable to income or estate taxes) ..... $.....

8. The time within which this claim may be legally filed expires, under Section 322 of the Revenue Act of 1928, on March 30, 1933

The deponent verily believes that this claim should be allowed for the following reasons:

The amount claimed for refund is an additional assessment for the calendar year 1928 of $2581.74 and interest arising by reason of the erroneous inclusion in taxpayer's income for the calendar year 1928 of the income of the Ida M. Douglas Trust and a portion of the income of the Florence Douglas Trust distributable and distributed to Ida M. Douglas and Florence Douglas, the beneficiaries thereof. Reference is here made to the report of the Examining Revenue Agent for the calendar year 1928, dated October 16, 1930, in the case of Edward B. Douglas, and references therein made.

Edward B. Douglas contends that the trusts in question were irrevocable and that the income and the trust corpus was beyond his control and that the income thereof was, therefore, not taxable to him.

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(Attach letter size sheets if space is not sufficient)

(Seal) EDWARD B. DOUGLAS,
Signed By FIRST MINNEAPOLIS
TRUST COMPANY,

L. H. R. His Attorney-in-fact.
By Lew Wallace, Asst. Secretary.

Sworn to and subscribed before me this 1st day of April, 1931.

L. H. ROUSE, .....
(Signature of officer administering oath) (Title)

L. H. ROUSE,
Notary Public, Hennepin County, Minn.

My commission expires March 15th, 1938.

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40 Exhibit V.

Treasury Department
Washington

Office of
Commissioner of Internal Revenue

First Mpls. Trust Co.

Received
Dec. 7-1931.

IT:C:CC-5
CCP

A M P M
7 8 9 10 11 12 1 2 3 4 5 6

Dec. 4, 1931

Mr. Edward B. Douglas,
c/o First Minneapolis Trust Company,
115 South First Street,
Minneapolis, Minnesota.

In re: Refund Claim for year 1928
Amount $2,841.61

Sir:

Your claim for refund of taxes, above referred to, was disallowed by the Commissioner on a schedule dated December 4, 1931.

Respectfully,

J. C. WILMER,
Deputy Commissioner.
By T. F. Langley,
Head of Division.

1203M

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L

Form 843
Treasury Department
Internal Revenue Service
Revised June, 1930

Exhibit VI.

Claim

To Be Filed With The Collector Where Assessment Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

| | |
|---|---|
| | Refund of Tax Illegally Collected. |
| | Refund of Amount Paid for Stamps Unused, or Used in Error or Excess. |
| | Abatement of Tax Assessed (not applicable to estate or income taxes.) |

Collector's Stamp

(Date received)

Received
Coll. of Int. Rev.
Dist. Minn.
Dec 28 1931
St. Paul Office

State of.....
County of..... } ss.

Name of taxpayer or purchaser of stamps: Edward J. Douglas

Type or Print

Business address: % First Minneapolis Trust Company
(Street) 115 S. Fifth St. Minneapolis, Minnesota. (City) (State)

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed Minnesota
2. Period (if for income tax, make separate form for each taxable year) from Jan. 1st, 1927, to December 31, 1927
3. Character of assessment or tax Income taxes
4. Amount of assessment, $2,094.78; dates of payment June 4, 1931
5. Date stamps were purchased from the Government.....
6. Amount to be refunded.....$2,094.78
7. Amount to be abated (not applicable to income or estate taxes) ..... $.....
8. The time within which this claim may be legally filed expires, under Section 284 of the Revenue Act of 1926, on June 4th, 1934

The deponent verily believes that this claim should be allowed for the following reasons:

The amount claimed for refund is an additional assessment for the calendar year 1927 of $2,094.78, being a deficiency for that year of $1,758.38 and interest arising by reason of the erroneous inclusion in taxpayer's income for the calendar year 1927 of the income of the Ida M. Douglas Trust distributable and distributed to Ida M. Douglas, the beneficiary thereof. Reference is here made to Bureau letter dated March 5, 1931 (IT:AR:D-1HBA-60D.) and to copy of trust agreement dated September 12, 1923, between Edward Bruce Douglas, Ida M. Douglas and Minneapolis Trust Company, on file with the Bureau.

Edward Bruce Douglas contends that the trusts in question were irrevocable, that he received none of the income upon which he has been taxed by virtue of the Bureau action, as expressed in its letter aforesaid, and that the income of the trust was not taxable to him.

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(Attach letter size sheets if space is not sufficient)

EDWARD B. DOUGLAS,
By FIRST MINNEAPOLIS TRUST COMPANY,
His Attorney-in-fact.

.....

Sworn to and subscribed before me this ..... day of June, 1931.

....., .....
(Signature of officer administering oath) (Title)

---

42 Endorsed: Complaint Filed December 26, 1931, Joel M. Dickey, Clerk, By Margaret L. Mullane, Chief Deputy.

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43 (Summons and Marshal's Return.)

United States District Court, Third Division, District of Minnesota.

The President of the United States of America.

To the Marshal of the District of Minnesota—Greeting:

You Are Hereby Commanded, That you summon Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, late of your District, if he may be found therein, so that he be and appear within 20 days after service of this summons before the United States District Court for the District of Minnesota, at St. Paul, next to answer to the complaint filed therein by Edward B. Douglas, and have you then and there this writ.

Witness, the Honorable John B. Sanborn, United States District Judge at St. Paul this 26th day of December, A. D. 1931.

(Seal)

JOEL M. DICKEY, Clerk,
By Margaret L. Mullane,
Chief Deputy Clerk.

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44 Return on Service of Writ.

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed Summons on the therein-named Levi M. Willcuts, Collector of Internal Revenue for the District of Minnesota by handing to and leaving a true and correct copy thereof with A. M. Heimbach, his Deputy, authorized to receive services per-

sonally at St. Paul, Minn. in said District on the 28th day of December, A. D. 1931.

BERNARD ANDERSON,
U. S. Marshal
By O. H. Bakke, Deputy.

| M. Fees. | |
|---|---|
| Summons | 2.00 |
| Mileage | .06 |
| | 2.06 |

Endorsed: Filed in U. S. District Court on Dec. 30, 1931.

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45 (Stipulation Extending Time to File Answer.)

It Is Hereby Stipulated and Agreed by and between the parties hereto, through their respective attorneys, that the time within which the defendant may answer plaintiff's complaint is extended for a period of thirty (30) days from the date hereof.

Dated this 15th day of January, 1932.

JUNELL, OAKLEY, DRISCOLL & FLETCHER,
LELAND W. SCOTT,
Attorneys for Plaintiff.

LEWIS L. DRILL,
Attorney for Defendant.

Endorsed: Stipulation. Filed Jan. 13, 1932. Joel M. Dickey, Clerk. By William H. Eckley, Deputy.

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46 (Stipulation Further Extending Time to File Answer.)

It Is Hereby Stipulated And Agreed by and between the parties hereto, through their respective attorneys, that the time within which the defendant may answer plaintiff's complaint herein is extended for a period of sixty (60) days from the date hereof.

Dated this 3rd day of February, 1932.

LELAND W. SCOTT,
JUNELL, OAKLEY, DRISCOLL & FLETCHER,
Attorneys for Plaintiff.

LEWIS L. DRILL, G.
Attorney for Defendant.

Endorsed: Stipulation. Filed Feb. 3, 1932. Joel M. Dickey, Clerk. By William H. Eckley, Deputy.

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47 Answer.

Now comes the defendant, Levi M. Willcuts, as Collector of Internal Revenue in and for the District of Minnesota, and for his answer to the complaint of the plaintiff herein denies each and every allegation thereof.

Wherefore, the defendant prays that the plaintiff take nothing herein, that the complaint be dismissed and for such other and further relief as to the Court may seem proper.

LEWIS L. DRILL,
United States Attorney and
Attorney for Defendant.

State of Minnesota,
County of Ramsey—ss.

Levi M. Willcuts, being first duly sworn, upon oath says that he is the Collector of Internal Revenue in and for the District of Minnesota, the defendant in the foregoing answer; that he has read the foregoing answer and knows the contents thereof; that the same is true to his own knowledge except as to matters stated therein on information and belief, and as to those matters he believes it to be true.

LEVI M. WILLCUTS.

Subscribed and sworn to before me this 29th day of March, [1934].

(Seal)

WILLIAM J. DIFFLEY,
Notary Public Ramsey County,
Minnesota.

My commission expires Feb. 14, 1935.

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Due service of the within Answer is hereby admitted this 30th day of March, 1932.

LELAND W. SCOTT,
Attorney for Plaintiff.

Endorsed: Answer. Filed April 2, 1932. Joel M. Dickey, Clerk. By Margaret L. Mullane, Chief Deputy.

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48 Amended Answer.

United States District Court, District of Minnesota, Third Division.

Edward B. Douglas, Plaintiff,
No. 2390. vs. At Law
Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, Defendant.

Comes now the above-named defendant, Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, by his attorney, Lewis L. Drill, United States Attorney for the District of Minnesota, and for answer to the plaintiff's complaint in the above-entitled action and cause, admits, denies and alleges as follows:

I.

Admits the allegations of paragraph I.

II.

Admits the allegations of paragraph II.

III.

Admits the allegations of paragraph III.

IV.

Denies the allegations of paragraph IV, except that he admits that the plaintiff executed an agreement September 12, 1923, containing the terms and conditions disclosed in the copy of an agreement attached to the complaint as Exhibit 1; that he delivered the securities listed and described in Exhibit "A" attached to the agreement, to the Minneapolis Trust Company, and on November 6, 1927, he delivered the securities listed and described in Exhibit II of the Complaint, to the Minneapolis Trust Company; that the net income received from the securities so deposited with the Minneapolis Trust Company during the calendar year ending December 31, 1928, was $17,617.39; and consisted of the following items, to-wit: interest on tax-free covenant bonds, $9,260.96; tax paid at source on tax-free covenant bonds, $185.22; cash dividends, $6,441.96; other income, $1,914.47.

49 V.

Denies the allegations of paragraph V, except that he admits that the plaintiff executed an agreement March 16, 1928, containing terms and conditions identical with those disclosed in the copy of the agreement marked Exhibit III,

attached to the complaint; that the plaintiff delivered the securities listed and described in Exhibit "A" of the agreement, to the First Minneapolis Trust Company; that the net income received from the property so deposited with the First Minneapolis Trust Company during the calendar year ending December 31, 1928, was $28,619.95; and consisted of the following items, to-wit: interest on tax-free covenant bonds, $120.00; tax paid at source on tax-free covenant bonds, $2.40; cash dividends, $17,087.00; other income, $11,412.95.

VI.

Denies the allegations of paragraph VI, except that he admits that on March 15, 1929, the plaintiff made and filed a return with the defendant as Collector of Internal Revenue of the United States for the District of Minnesota, of income for the calendar year ending December 31, 1928, but alleges that the return disclosed the plaintiff's gross income for the taxable year to be $42,747.79; deductions, $3,418.20; and net income $39,329.59; also that the net income disclosed by the return did not include the net income of $17,617.39 earned and collected from the property deposited with the Minnesota Trust Company pursuant to the instruments signed by the plaintiff September 12, 1923, and November 6, 1927, respectively; and that it did not include the net income of $28,619.95 earned and collected on the property deposited with the First Minneapolis Trust Company pursuant to the agreement signed by the plaintiff March 16, 1928.

VII.

Denies the allegations of paragraph VII, except that he admits that the plaintiff's return for the calendar year ending December 31, 1928, was audited and reviewed by the Commissioner of Internal Revenue of the United States October 16, 1930; that following its audit and review by said official the Commissioner notified the plaintiff that he had determined that the plaintiff was required to include in the return of his income for the calendar year ending December 31, 1928, the net income earned and collected from the property deposited with the Minneapolis Trust Company pursuant to the instrument signed September 12, 1923, and November 6, 1927, respectively, and $1,046.98 of the net income earned and collected from the property deposited with the First Minneapolis Trust Company pursuant to the instrument signed March 16, 1928; and the sum of $1,046.98 is that portion of the net income of $28,619.95 applied by the First Minneapolis Trust Company toward the payment of the premiums on the insurance policies described in

Exhibit III and Schedule "B" attached to the complaint. The defendant also admits that the Commissioner included the sum of $17,617.39 and the sum of $1,046.98 in the plaintiff's gross income for the calendar year ending December 31, 1928, and in determining the plaintiff's tax liability for said taxable year, and that the inclusion of the alleged sums increased the plaintiff's income tax liability for the calendar year ending December 31, 1928, over the amount reported in his return, $2,581.74, and that said additional tax with interest thereon amounting to $259.87, was assessed against the plaintiff in March, 1931.

VIII.

Admits the allegations of paragraph VIII.

IX.

Admits the allegations of paragraph IX.

For his answer to the second cause of action alleged in the plaintiff's complaint, the defendant admits, denies and alleges as follows:

X.

The defendant denies the allegations incorporated by reference in paragraph X except the allegations of paragraphs I, II and III.

XI.

The defendant denies the allegation of paragraph IX except that he admits that the net income earned and col-
51 lected upon the property delivered to the Minneapolis Trust Company pursuant to the instruments signed by the plaintiff September 12, 1923, and November 6, 1927, respectively, for the calendar year ending December 31, 1927, was and is the sum of $12,610.52, and consisted of the following items, to-wit: dividends, $9,857.66; other income, $2,752.86.

XII.

Denies the allegations of paragraph XII, except that he admits that the plaintiff on March 15, 1928, made and filed a return with the defendant as Collector of Internal Revenue of the United States for the District of Minnesota, of income for the calendar year ending December 31, 1927, but alleges that the return reported the plaintiff's gross income for the taxable year to be $50,059.31, deductions $6,978.18, and net income $43,071.13; and did not include as a part of the plaintiff's gross income the net income of $12,610.52 earned and collected from the property deposited with the

Minneapolis Trust Company, pursuant to the instruments signed by the plaintiff September 12, 1923, and November 6, 1927, respectively.

XIII.

Denies the allegations of paragraph XIII, except that he admits that the plaintiff's return for the calendar year ending December 31, 1927, was audited and reviewed by the Commissioner of Internal Revenue of the United States March 5, 1931; that following its audit and review by said official the Commissioner notified the plaintiff that he had determined that the plaintiff was required to include in the return of his income for the calendar year ending December 31, 1927, the net income of $12,610.52 earned and collected from the property deposited with the Minneapolis Trust Company pursuant to the instruments signed September 12, 1923, and November 6, 1927, respectively. The defendant also admits that the Commissioner included the sum of $12,610.52 in the plaintiff's gross income for the calendar year ending December 31, 1927, in determining the plaintiff's tax liability for said taxable year, and that the inclusion of the alleged sum increased the plaintiff's income tax liability for the calendar year ending December 31, 1927, over the amount reported in his return, $1,758.38, and that said additional tax with interest thereon amounting to $336.40 was assessed against the plaintiff in May, 1931.

52 XIV.

Admits the allegations of paragraph XIV.

XV.

Admits the allegations of paragraph XV.

For further and separate answer and defense to the plaintiff's First Cause of Action the defendant alleges:

I.

Prior to September 12, 1923, certain differences and disagreements arose between the plaintiff and his first wife, Ida M. Douglas, causing a separation or a divorce to appear imminent, and in order to settle the possible claims of the first Mrs. Douglas for separate maintenance, allowances for support, alimony, dower rights and statutory interests in his estate, the plaintiff agreed to pay her the sum of $15,000.00 per annum from September 1, 1923, until November 6, 1927, and the sum of $21,000.00 per annum from November 6, 1927, during the remainder of her lifetime.

II.

To secure the payment of the sums to be paid pursuant to the above mentioned agreement, the plaintiff on September 12, 1923, deposited in escrow securities of the par or estimated value of $330,000.00, and agreed to deposit such portion of the properties as he should thereafter receive from the estate of his father, Walter E. Douglas, under the provisions of his father's will, to the value of $120,000.00, in escrow with the Minneapolis Trust Company of Minneapolis, Minnesota, with instructions to pay the annual income therefrom accruing thereon in quarter annual installments to Ida M. Douglas, but reserved unto himself the right from time to time to substitute and change the securities with the consent and approval of his wife and to designate and determine in what securities the net income received in excess of the stipulated annual payments shall be invested, subject only to the approval of the Trust Company. In the agreement concerning the escrow deposit, it was and is provided that in case the net income from the securities shall not be sufficient at any time to make the stipulated annual payments, the plaintiff will, upon the request of the Trust Company, make good the deficiency; also that if he shall
53 fail to make good the deficiency the Trust Company may make up the deficiency from the sale of the securities or otherwise as it deems advisable. Upon full compliance with the terms and conditions of the escrow, the Trust Company is obliged to return the securities and property deposited with it to the plaintiff or his heirs or assigns.

III.

Shortly after the delivery of the above-mentioned securities to the Minneapolis Trust Company, the plaintiff's wife, Ida M. Douglas, obtained a divorce and the Court which rendered the decree confirmed the agreement of settlement made by the parties September 12, 1923, and adopted the provisions of the same as the Court's award of alimony and provision in settlement of the wife's dower rights and statutory interests in the estate and property of the plaintiff.

IV.

Following the rendition and entry of the decree of divorce between the plaintiff and his first wife, Ida M. Douglas, the plaintiff remarried one Florence S. Douglas.

V.

Prior to March 16, 1928, certain differences and disagreements arose between the plaintiff and his second wife, Flor-

ence S. Douglas, which made it appear reasonably certain that a separation or divorce would occur between the parties, and in order to settle and satisfy the possible claims and demands of the second Mrs. Douglas, for dower rights and statutory interests in his estate and any and all rights to or claims for alimony, suit moneys, attorney's fees, and of any and all rights to or claims for separate maintenance and allowance for support; and in consideration of the promise and agreement by Florence S. Douglas to pay all debts and other obligations incurred by her after March 16, 1928, for the purchase of necessities or for other purposes, and to save the plaintiff harmless from all liabilities arising out of debts contracted or obligations incurred by her after said date for any purpose whatsoever, the plaintiff agreed to deposit certain securities and items of property with the First Minneapolis Trust Company of Minneapolis, Minnesota, with instructions to apply the net income arising therefrom as follows:

(1) To pay the premiums on two life insurance poli-
54 cies covering the life of the plaintiff of the face value of $65,000.00, and one-fifth of the premium on a life insurance policy on the life of the plaintiff of the face value of $10,000.00 so long as Florence S. Douglas shall live;

(2) Upon the death of Florence S. Douglas, to distribute from such securities and items of property as the Trust Company shall select in an amount aggregating a fair market value of the sum of $217,000.00 to the person or persons designated to receive the same or entitled to receive the same by the provisions of or in accordance with the terms of the last will of Florence S. Douglas;

(3) Subject to the performance of conditions (1) and (2) to transfer, set over, deliver and distribute the securities and items of property deposited to the plaintiff if he be then living, but if he be then deceased, to the person or persons designated to receive the same or entitled to receive the same by the provisions of or in accordance with his will or in the absence of the will, to his heirs.

VI.

In addition to securing the performance of the terms and conditions of the agreement of March 16, 1928, it was and is provided in the escrow agreement that title to the securities and items of property shall not vest in Florence S. Douglas during the continuance of the escrow and that the agreement itself may be amended or revoked by the written notice of the parties delivered to the Trust Company.

VII.

The net income received by the Minneapolis Trust Company from the securities deposited pursuant to the agreement executed between the plaintiff and Ida M. Douglas during the calendar year ending December 31, 1928, amounted to the sum of $17,617.39, consisting of the following items, to-wit: interest on tax-free covenant bonds, $9,260.96; tax paid at source on tax-free covenant bonds, $185.22; cash dividends, $6,441.96; other income, $1,914.47.

55

VIII.

The net income received by the First Minneapolis Trust Company from the securities and items of property deposited pursuant to the agreement of the plaintiff and Florence S. Douglas during the calendar year ending December 31, 1928, amounted to the sum of $28,619.95, consisting of the following items, to-wit: interest on tax-free covenant bonds, $120.00; tax paid at source on tax-free covenant bonds, $2.40; cash dividends, $17,087.00; other income, $11,412.95.

IX.

In reporting his net income for the calendar year ending December 31, 1928, the plaintiff did not include in his gross income the sum of $17,617.39, collected by the Minneapolis Trust Company pursuant to the agreement between the plaintiff and Ida M. Douglas or any part of the sum of $28,619.95 collected by the First Minneapolis Trust Company pursuant to the agreement between the plaintiff and Florence S. Douglas.

X.

In determining the plaintiff's income for the calendar year ending December 31, 1928, the Commissioner of Internal Revenue included the income received by the Minneapolis Trust Company from the securities deposited pursuant to the agreement between the plaintiff and Ida M. Douglas, and the income received by the First Minneapolis Trust Company from the securities and items of property deposited pursuant to the agreement between the plaintiff and Florence S. Douglas to the extent of $1,046.98, representing the portion of said net income applied by the Trust Company towards the payment of the premiums on the policies of insurance mentioned in paragraph V hereof, in the plaintiff's gross income for said taxable period. The inclusion of the amounts in the plaintiff's gross income for the calendar year ending December 31, 1928, increased the plaintiff's income

tax for said taxable period $2,581.74, with interest thereon in the amount of $259.87. The additional tax was duly assessed in March, 1931.

56

XI.

March 30, 1931, the defendant demanded and received from the plaintiff the sum of $2,841.61 in full payment of the above-mentioned additional tax. April 8, 1931, the plaintiff filed with the Commissioner of Internal Revenue a claim for refund of the sum paid by the plaintiff to the defendant March 30, 1931.

XII.

September 4, 1931, the Commissioner of Internal Revenue disallowed the plaintiff's claim for refund and said action was correct and proper for amongst others the following reasons, to-wit:

(1) The agreements executed September 12, 1923, and November 6, 1927, respectively, are in effect pledges, securing the payment of alimony, maintenance and support money to the plaintiff's divorced wife, Ida M. Douglas, which payments are not allowable or proper deductions from the plaintiff's gross income for the calendar year 1928.

(2) The agreements executed September 12, 1923, November 6, 1927, and March 16, 1928, are not absolute and unconditional transfers but escrows that are terminable whenever the plaintiff shall have complied with the con[illegible]ns of the respective deposits. The Minneapolis Trust [illegible]pany and the First Minneapolis Trust Company are not trustees but agents of the plaintiff.

(3) The portion of the income applied by the First Minneapolis Trust Company towards the payment of premiums accruing upon the policies insuring the life of the plaintiff constitute taxable income received and returnable by the plaintiff.

(4) The alleged transfers are revocable. The securities and items of property delivered by the plaintiff to the Minneapolis Trust Company pursuant to the agreements of September 12, 1923, and November 6, 1927, remain subject to the possession, control and enjoyment of the plaintiff who is authorized to withdraw them with the consent of Ida M. Douglas, such consent being obligatory upon her part and not capable of being unreasonably withheld or refused.

(5) The income received from the securities and property deposited with the Minneapolis Trust Company
57 in so far as the same exceeds the amount of the annual payments stipulated to be made to Ida M. Douglas, is required to be held and accumulated for future distribution to the plaintiff.

XIII.

By reason of the matters hereinabove alleged, the additional tax of $2,841.61 was due and owing from the plaintiff and lawfully collected by the defendant.

For further and separate answer and defense to the plaintiff's Second Cause of Action the defendant alleges:

XIV.

The defendant refers to paragraphs I, II, and III of his first further and separate answer and by such reference incorporates the same as part of this defense.

XV.

The net income received by the Minneapolis Trust Company from the securities deposited pursuant to the agreement executed between the plaintiff and Ida M. Douglas during the calendar year ending December 31, 1927, amounted to the sum of $12,610.52, consisting of the following items, to-wit: dividends, $9,857.66; other income, $2,752.86.

XVI.

In reporting his net income for the calendar year ending December 31, 1927, the plaintiff did not include in his gross income the sum of $12,610.52, collected by the Minneapolis Trust Company pursuant to the agreement between the plaintiff and Ida M. Douglas.

XVII.

In determining the plaintiff's income for the calendar year ending December 31, 1927, the Commissioner of Internal Revenue included the income received by the Minneapolis Trust Company from the securities deposited pursuant to the agreement between the plaintiff and Ida M. Douglas. The inclusion of the amount of the plaintiff's gross income for the calendar year ending December 31, 1927, increased the plaintiff's income tax for said taxable period $1,758.38 with interest thereon in the amount of $336.40. The additional tax was duly assessed in May, 1931.

58

XVIII.

June 3, 1931, the defendant demanded and received from the plaintiff the sum of $2,094.78 in full payment of the above-mentioned tax.

XIX.

June 15, 1931, the plaintiff filed with the Commissioner of Internal Revenue a claim for refund of the sum paid by the plaintiff to the defendant on June 3, 1931.

XX.

The Commissioner of Internal Revenue has not allowed the plaintiff's claim for refund filed June 15, 1931, and has not taken any action in regard to the same for amongst others the following reasons, to-wit:

(1) The agreements executed September 12, 1923, and November 6, 1927, respectively, are in effect pledges securing the payment of alimony, maintenance and support money to the plaintiff's divorced wife, Ida M. Douglas, which payments are not allowable or proper deductions from the plaintiff's gross income for the calendar year 1927.

(2) The agreements executed September 12, 1923, and November 6, 1927, respectively, are not absolute and unconditional transfers but escrows that are terminable whenever the plaintiff shall have complied with the conditions of the respective deposits. The Minneapolis Trust Company is not the trustee but the agent of the plaintiff.

(3) The alleged transfers are revocable. The securities and items of property delivered by the plaintiff to the Minneapolis Trust Company pursuant to the agreements of September 12, 1923, and November 6, 1927, remain subject to the possession, control and enjoyment of the plaintiff who is authorized to withdraw them with the consent of Ida M. Douglas, such consent being obligatory upon her part and not capable of being unreasonably withheld or refused.

(4) The income received from the securities and property deposited with the Minneapolis Trust Company in so far as the same exceeds the amount of the annual payments stipulated to be made to Ida M. Douglas, is required to be held and accumulated for future distribution to the plaintiff.

59

XXI.

By reason of the matters hereinabove alleged the additional tax of $2,094.78 was due and owing from the plaintiff and was lawfully collected by the defendant.

Wherefore, the defendant having fully answered the complaint of the plaintiff herein, demands that the plaintiff's action be dismissed and that he recover his costs and disbursements.

LEWIS L. DRILL,
G.
United States Attorney.
Attorney for Defendant.

State of Minnesota,
County of Ramsey—ss.

Levi M. Willcuts, being first duly sworn, upon oath says that he is the Collector of Internal Revenue in and for the District of Minnesota, the defendant in the foregoing amended answer; that he has read the foregoing amended answer and knows the contents thereof; and that the same is true to his own knowledge except as to matters stated therein on information and belief, and as to those matters he believes it to be true.

LEVI M. WILLCUTS.

Subscribed and sworn to before me this 7th day of June, 1932.

E. M. HEIMBACH,
(Notarial Seal) Notary Public, Ramsey County, Minn.

My Commission Expires Oct. 1st, 1932.

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Due service of the within Amended Answer is hereby admitted this 7th day of June, 1932.

JUNELL, OAKLEY, DRISCOLL & FLETCHER, Attorneys for Plaintiff.

Endorsed: Amended Answer. Filed June 9, 1932. Joel M. Dickey, Clerk. By Margaret L. Mullane, Chief Deputy.

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60 Reply.

Comes now Plaintiff above named and for his reply to the amended answer of defendant herein,

I.

Specifically denies each and every allegation thereof save and except as the same admits the allegations of plaintiff's complaint, or as herein otherwise qualified or admitted.

II.

Alleges that the agreement and trust settlement had by and between Edward Bruce Douglas, Ida M. Douglas and Minneapolis Trust Company, dated the 12th day of September, 1923, and the further transfer of securities of the 6th day of November, 1927, pursuant to said agreement, are as set forth in Exhibits I and II attached to Plaintiff's complaint and made a part thereof and not otherwise; alleges further that the agreement and trust settlement had by and between Edward Bruce Douglas, First Minneapolis Trust Company and Florence S. Douglas, dated the 16th day of March, 1928, is as set forth in Exhibit III attached to Plaintiff's complaint and made a part thereof and not otherwise; alleges that said exhibits I, II and III constitute the only agreements by and between said parties relative to the subject matter thereof.

III.

Alleges that on the 15th day of September, 1923, the bonds of matrimony, therefore existing between Ida M. Douglas and Edward Bruce Douglas, were duly dissolved and that on said date the District Court of Beltrami County in the
61 Fifteenth Judicial District of the State of Minnesota entered its judgment and decree, a copy of which, marked Exhibit VII is hereto attached and hereby made a part hereof.

IV.

Specifically denies that the securities transferred pursuant to the terms of said agreements were transferred in escrow, or that said agreements, or either of them, constitute escrow agreements, or that said agreements constitute anything other than trust agreements as alleged in said complaint of plaintiff herein.

Wherefore Plaintiff demands judgment as prayed in his complaint.

Dated July 27, 1932.

LELAND W. SCOTT,
1310 First National-Soo Line Bldg.,
Minneapolis, Minnesota.
Counsel for Plaintiff.

Of Counsel:
Junell, Oakley, Driscoll & Fletcher.

62 State of Minnesota,
County of Hennepin—ss:

William J. Stevenson being first duly sworn, says that he is the Vice President of First Minneapolis Trust Company,

the duly appointed attorney-in-fact of the plaintiff above named; that First Minneapolis Trust Company is acting in the matter referred to in the foregoing Reply pursuant to a Power of Attorney, which has not been revoked, given and executed by the Plaintiff; that the reason why this verification is not made by the plaintiff is that he is absent from the United States, wherein affiant resides; that affiant has read the foregoing reply and is familiar with the statements contained therein; that the facts therein stated are true, except as to those facts stated to be upon information and belief and those facts he believes to be true.

WILLIAM J. STEVENSON.

Subscribed and sworn to before me this 28th day of July, A. D. 1932.

L. H. ROUSE,

(Notarial Seal) Notary Public, Hennepin County, Minn.

My Commission expires March 15th, 1938.

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63 Exhibit VII.

Judgment and Decree.

District Court
15th Judicial District.

State of Minnesota,
County of Beltrami.

Ida M. Douglas, Plaintiff,
vs.
Edward Bruce Douglas, Defendant.

The above entitled action came regularly on to be heard before the Honorable C. W. Stanton, one of the judges of the above entitled Court in Chambers on the 15th day of September, 1923, and the Court having found that due service of the summons and complaint upon the defendant had been made on the 12th day of September, 1923, and that the defendant had thereafter duly made and served upon the plaintiff his answer to said complaint and after hearing the evidence adduced on behalf of the plaintiff, there being no evidence offered by the defendant, and being fully advised in the premises, and having duly made and filed its findings and order for judgment herein,

Now Pursuant to Said Order, and on motion of Lancaster, Simpson, Junell & Dorsey, attorneys for the plaintiff,

It Is Hereby Adjudged and Decreed that the bonds of matrimony heretofore existing between the plaintiff and defendant be and the same hereby are dissolved and the parties are hereby discharged from the obligations of their marriage contract and absolutely divorced from each other.

It Is Further Adjudged and Decreed that the defendant provide and create the trust fund as set out in that certain agreement between said parties and the Minneapolis Trust Company as trustee now on file with said trustee, and that the plaintiff have the provision therein made in lieu of all other alimony or interest in the property or estate of the defendant and the neither party have any costs or disbursements herein.

Dated at Bemidji, Beltrami County, Minnesota, this 15th day of September, 1923.

.....

Clerk of the District Court, 15th Judicial District, Beltrami County, Minnesota.

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64 Due and personal service of the within Reply is hereby admitted this 29 day of July, 1932.

LEWIS L. DRILL,
T.
Attorney for Defendant.

Endorsed: Reply Filed July 29, 1932, Joel M. Dickey, Clerk, By Kathryn F. O'Connor, Deputy.

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65 Notice of Trial.

To Honorable L. L. Drill, United States Attorney and Attorney for Defendant:

Take Notice that the issues of law and fact in the above cause will be brought on for trial at the next General Term of the above entitled Court to be held in the Federal Building in the City of St. Paul on the first Tuesday in November, 1932.

Dated August 30th, 1932.

LELAND W. SCOTT,
1310 First National-Soo Line Bldg.,
Minneapolis, Minnesota,
Counsel for Plaintiff.

Of Counsel:
Junell, Oakley, Driscoll & Fletcher.

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Service Admitted this 1st day of September, 1932.

LEWIS L. DRILL. G.

Endorsed: Notice of Trial Filed September 1st, 1932. Joel M. Dickey, Clerk, By Margaret L. Mullane, Chief Deputy.

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66 Stipulation Waiving Jury.

It Is Hereby Stipulated And Agreed by and between the parties to the above entitled action, through their respective counsel, that the issues in the case may, upon the trial thereof, be submitted to the Court for determination without a jury, a jury trial herein being hereby expressly waived.

Dated Oct. 27, 1932.

JUNELL, DRISCOLL, FLETCHER, DORSEY & BARKER,
Attorneys for Plaintiff.

LEWIS L. DRILL, G
United States Attorney and Attorney for Defendant.

Endorsed: Stipulation Waiving Jury. Filed October 28, 1932, Joel M. Dickey, Clerk, By Margaret L. Mullane, Chief Deputy.

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67 (Findings of Fact and Conclusions of Law of the District Court; Judgment, July 27, 1933.)

In the District Court of the United States in and for the District of Minnesota, Third Division.

Term Minutes

April Term, A. D. 1933.

July 27, 1933.

Thursday Morning,

Court opened pursuant to adjournment.

Present:—Honorable Matthew M. Joyce, Judge.

United States District Court, District of Minnesota, Third Division.

Edward B. Douglas, Plaintiff,
No. 2390 vs. At Law.
Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, Defendant.

## Findings of Fact and Conclusions of Law.

The above entitled cause came on to be heard before the undersigned, one of the Judges of the United States District Court, District of Minnesota, Third Division, during the regular term of said Court commencing on the first Tuesday in November, 1932, on December 12, 1932, in the Federal Building in the City of St. Paul, Ramsey County, Minnesota, the parties having agreed that said cause be tried to the Court and that a jury be waived, said agreement having been reduced to writing and filed with the Clerk of this Court. Mr. Leland W. Scott of Junell, Driscoll, Fletcher, Dorsey & Barker, counsel for the Plaintiff, appeared on behalf of the plaintiff and Honorable L. L. Drill, United States Attorney and Mr. M. W. Goldsworthy, Special Assistant United States Attorney, counsel for the Defendant, appeared on behalf of the defendant.

Upon the pleadings and the evidence offered and received upon said hearing and all the files and records herein the Court now makes the following Findings of Fact and Conclusions of Law:

### Findings of Fact.

1. Edward B. Douglas, the plaintiff, is and at all times hereinafter mentioned was a citizen of the United States and a resident of Deephaven, Hennepin County, in the State and District of Minnesota. Levi M. Willcuts, the defendant, was in the year 1921, at all times since has been and now is the duly appointed, qualified and acting Collector of Internal Revenue of the United States in and for the District of Minnesota.

2. This is a suit of a civil nature at common law, arising under the constitution and laws of the United States and particularly under the laws of the United States pertaining
68 to internal revenue. This action is to recover Two Thousand Eight Hundred Forty-one and 61/100 Dollars ($2,841.61), with interest from March 30, 1931, and Two Thousand Ninety-four and 78/100 Dollars ($2,094.78), with interest from June 4, 1931. Said sums constitute additional income taxes assessed by the Commissioner of Internal Revenue of the United States against and paid by plaintiff to defendant as Collector of Internal Revenue of the United States for the District of Minnesota for the calendar years 1927 and 1928, respectively. Plaintiff paid defendant said sums and the interest accrued thereon upon demand and under protest and to prevent distraint and the imposition of further interest, penalties and costs upon him on March 30, and June 4,

1931, respectively. Plaintiff duly filed a claim for the refund of said sum of Two Thousand Eight Hundred Forty-one and 61/100 Dollars ($2,841.61) with said Commissioner of Internal Revenue on April 8, 1931 Said Commissioner of Internal Revenue rejected Plaintiff's said claim on December 4, 1931. Plaintiff duly filed with said Commissioner of Internal Revenue a claim for the refund of said sum of Two Thousand Ninety-four and 78/100 Dollars ($2,094.78) on June 15, 1931. Said claim was never formally rejected by said Commissioner of Internal Revenue and no part of the amounts paid defendant and claimed as aforesaid has ever been refunded to plaintiff. More than six months expired after filing said claim for Two Thousand Ninety-four and 78/100 Dollars ($2,094.78) before this action was commenced. This action was commenced on December 28, 1931.

3. On September 12, 1923, Plaintiff, Ida M. Douglas and Minneapolis Trust Company executed that certain agreement dated September 12, 1923, a true and correct copy of which, marked Exhibit 1, is attached to plaintiff's complaint herein. Said agreement, for convenience, will hereinafter be referred to as the Ida M. Douglas Trust. On September 12, 1923, plaintiff conveyed, assigned, transferred and set over to Minneapolis Trust Company as Trustee under said agreement the securities listed and described in Exhibit A attached to said agreement. On November 6, 1927, plaintiff conveyed, assigned, transferred and set over to Minneapolis Trust Company as trustee additional securities to be held by said Trust Company pursuant to the terms, conditions, provisions and covenants of said agreement dated September 12, 1923. The securities transferred on November 6, 1927, are described in the instrument, a true and correct copy of which, marked Exhibit 2, is attached to plaintiff's complaint. On November 10, 1923, plaintiff waived the right secured to him by Article 3 on Page 2 of the agreement of September 12, 1923, to designate and determine the securities for the investment of the trust funds referred to in said agreement and approved any and all investments made by Minneapolis Trust Company pursuant to said agreement. The net income of the Ida M.

69 Douglas Trust for the calendar year ended December 31, 1927, earned and collected upon the property transferred to Minneapolis Trust Company pursuant to the agreements dated September 12, 1923, and November 6, 1927, aforesaid, was Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52). Said net income consisted of the following items, to-wit: Dividends Nine Thousand Eight Hundred Fifty-seven and 66/100 Dollars ($9,857.66), other income Two Thousand Seven Hundred Fifty-two and

86/100 Dollars ($2,752.86). The net income of the Ida M. Douglas Trust for the calendar year ended December 31, 1928, earned and collected upon the property transferred to Minneapolis Trust Company pursuant to the instruments dated September 12, 1923, and November 6, 1927, aforesaid, was Seventeen Thousand Six Hundred Seventeen and 39/100 Dollars ($17,617.39) and consisted of the following items, to-wit: Interest on tax-free covenant bonds, Nine Thousand Two Hundred Sixty and 96/100 Dollars ($9,260.96), tax paid at source on taxfree covenant bonds, One Hundred Eighty-five and 22/100 Dollars ($185.22), cash dividends, Six Thousand Four Hundred Forty-one and 96/100 Dollars ($6,441.96), other income, One Thousand Nine Hundred Fourteen and 47/100 Dollars ($1,914.47).

4. On March 16, 1928, plaintiff, First Minneapolis Trust Company and Florence S. Douglas executed an agreement dated March 16, 1928, a true and correct copy of which, marked Exhibit 3, is attached to plaintiff's complaint. For convenience said agreement will hereinafter be referred to as the Florence S. Douglas Trust. On March 16, 1928, plaintiff conveyed, assigned, transferred and set over to First Minneapolis Trust Company as Trustee under said agreement the securities listed and described in Exhibit A attached to said agreement. Plaintiff surrendered the power and right to change the beneficiary of policy No. 175,227 issued by Northwestern National Life Insurance Company on plaintiff's life and policy No. 465,994 issued by the Connecticut Mutual Life Insurance Company on plaintiff's life. The beneficiary of said policies of insurance is Florence S. Douglas and said policies are listed in Schedule B attached to said agreement. The net income of the Florence S. Douglas Trust for the calendar year ended December 31, 1928, received from the property transferred to First Minneapolis Trust Company pursuant to said agreement dated March 16, 1928, was Twenty-eight Thousand Six Hundred Nineteen and 95/100 Dollars ($28,619.95), consisting of the following items, to-wit: interest on tax-free covenant bonds, One Hundred Twenty Dollars ($120.00) tax paid at source on tax-free covenant bonds, Two and 40/100 Dollars ($2.40), cash dividends, Seventeen Thousand Eighty-seven and No/100 Dollars ($17,087.00), other income Eleven Thousand Four Hundred Twelve and 95/100 Dollars ($11,412.95).

5. On March 15, 1928, plaintiff made and filed a return with defendant as Collector of Internal Revenue of the United States for the District of Minnesota of income for
70 the calendar year ended December 31, 1927, showing therein as plaintiff's gross income for said calendar

year the sum of Fifty Thousand Fifty-nine and 31/100 Dollars ($50,059.31) as plaintiff's deductions the sum of Six Thousand Nine Hundred Seventy-eight and 18/100 Dollars ($6,978.18) and as plaintiff's net income the sum of Forty-three Thousand Seventy-one and 13/100 Dollars ($43,071.13). Plaintiff did not include in the gross income shown, as aforesaid, the net income of Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52) earned and collected from the property transferred to Minneapolis Trust Company pursuant to the instruments dated September 12, 1923, and November 6, 1927, aforesaid.

6. On March 15, 1929, plaintiff made and filed a return with defendant as Collector of Internal Revenue of the United States for the District of Minnesota of income for the calendar year ended December 31, 1928, showing therein gross income for said calendar year of Forty-two Thousand, Seven Hundred Forty-seven and 79/100 Dollars ($42,747.79), deductions of Three Thousand Four Hundred Eighteen and 20/100 Dollars ($3,418.20), and net income of Thirty-nine Thousand Three Hundred Twenty-nine and 59/100 Dollars ($39,329.59). Plaintiff did not include in the gross income aforesaid the net income of Seventeen Thousand Six Hundred Seventeen and 39/100 Dollars ($17,617.39) earned and collected from the property transferred to Minneapolis Trust Company pursuant to the instruments dated September 12, 1923, and November 6, 1927, aforesaid, and did not include in said gross income the net income of Twenty-eight Thousand Six Hundred Nineteen and 95/100 Dollars ($28,619.95) earned and collected from the property transferred to First Minneapolis Trust Company pursuant to the agreement dated March 16, 1928, aforesaid.

7. Plaintiff's return for the calendar year ended December 31, 1928, was audited and reviewed by the Commissioner of Internal Revenue of the United States on October 16, 1930. Thereafter said Commissioner notified plaintiff that he had determined that plaintiff was required to include in the return of his income for the calendar year ended December 31, 1928, the net income earned and collected from the property transferred to Minneapolis Trust Company pursuant to the instruments dated September 12, 1923, and November 6, 1927, aforesaid, and One Thousand Forty-six and 98/100 Dollars ($1,046.98) of the net income earned and collected from the property transferred to First Minneapolis Trust Company pursuant to the instrument dated March 16, 1928, aforesaid. Said sum of One Thousand Forty-six and 78/100 Dollars ($1,046.78) is that portion

of the net income of Twenty-eight Thousand Six Hundred Nineteen and 95/100 Dollars ($28,619.95), aforesaid,
71 applied by First Minneapolis Trust Company toward the payment of premiums on the insurance policies aforesaid. Said One Thousand Forty-six and 98/100 Dollars ($1,046.98) consists, according to the determination of said Commissioner, of interest on tax-free covenant bonds in the amount of Four and 39/100 Dollars ($4.39), other income in the amount of Four Hundred Seventeen and 51/100 Dollars ($417.51), and dividends in the amount of Six Hundred twenty-five and 08/100 Dollars ($625.08). Said Commissioner included said sum of Seventeen Thousand Six Hundred Seventeen and 39/100 Dollars ($17,617.39) and said sum of One Thousand Forty-six and 98/100 Dollars ($1,046.98) in plaintiff's gross income for the calendar year ended December 31, 1928. Said Commissioner thereupon determined that the inclusion of said sums in plaintiff's gross income for said calendar year increased plaintiff's income tax liability for said calendar year over that reported in plaintiff's return in the amount of Two Thousand Five Hundred Eighty-one and 74/100 Dollars ($2,581.74). Said additional tax, together with interest thereon in the amount of Two Hundred Fifty-nine and 87/100 Dollars ($259.87) was assessed against Plaintiff in March, 1931. On March 28, 1931, defendant demanded of plaintiff that he pay Two Thousand Eight Hundred Forty-one and 61/100 Dollars ($2,841.61), being the sum of the additional tax and interest aforesaid. Pursuant to said demand and under protest and to prevent distraint and the imposition of further interest, penalties and costs, plaintiff paid to defendant the said sum of Two Thousand Eight Hundred Forty-one and 61/100 Dollars ($2,841.61) on March 30, 1931.

8. Plaintiff's return for the calendar year ended December 31, 1927, was audited and reviewed by the Commissioner of Internal Revenue of the United States on March 5, 1931. Said Commissioner thereafter notified plaintiff that he had determined that plaintiff was required to include in the return of income for the calendar year ended December 31, 1927, the net income of Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52), earned and collected from the property transferred to Minneapolis Trust Company pursuant to the instruments dated September 12, 1923, and November 6, 1927, aforesaid. Said Commissioner included said sum of Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52) in plaintiff's gross income for said calendar year ended December 31, 1927, and determined

that the inclusion of said sum in plaintiff's gross income increased plaintiff's income tax liability for the calendar year ended December 31, 1927, over the tax liability disclosed in Plaintiff's return for said year in the amount of One Thousand Seven Hundred Fifty-eight and 38/100 Dollars ($1,758.38). Said additional tax, with interest thereon amounting to Three Hundred Thirty-six and 40/100 Dollars ($336.40), was assessed against Plaintiff in May, 1931. On June 3, 1931, defendant demanded of plaintiff that he pay Two Thousand Ninety-four and 78/100 Dollars ($2,094.78), being the sum of the additional tax and interest aforesaid. Pursuant to said demand and under protest, and to prevent distraint and the imposition of further interest, penalties and costs, plaintiff paid to defendant said sum of Two Thousand Ninety-four and 78/100 Dollars ($2,094.78), on June 4, 1931.

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9. On April 8, 1931, plaintiff filed with said Commissioner of Internal Revenue his claim for the refund of the sum paid defendant on March 30, 1931, as aforesaid, a true and correct copy of which claim, marked Exhibit 4, is attached to Plaintiff's complaint. On December 4, 1931, said Commissioner rejected plaintiff's said claim in full by letter dated December 4, 1931, a true and correct copy of which, marked Exhibit 5, is attached to plaintiff's complaint. On June 15, 1931, plaintiff filed with said Commissioner of Internal Revenue his claim for the refund of the sum paid by him to defendant on June 4, 1931. A true and correct copy of said claim, marked Exhibit 6, is attached to plaintiff's complaint. At the time of the commencement of this action more than six months had expired since the date of filing said claim and plaintiff had not been notified that said Commissioner of Internal Revenue had rendered his decision thereon and said Commissioner had not rendered his decision thereon at the time of the commencement of this action. No part of the additional tax and interest thereon paid by plaintiff to defendant on June 4, 1931, has ever been refunded to plaintiff.

10. On September 15, 1923, the bonds of matrimony theretofore existing between Ida M. Douglas and plaintiff were duly dissolved and on said date the District Court of Beltrami County in the Fifteenth Judicial District of the State of Minnesota entered its judgment and decree dissolving the bonds of matrimony theretofore existing between said parties and discharging said parties from the obligations of their marriage contract and absolutely divorcing each from the other. Said Court further adjudged and decreed that Ida M. Douglas have the provision made in the

agreement dated September 12, 1923, aforesaid, in lieu of all other alimony or interest in the property or estate of the defendant. A true and correct copy of said judgment and decree, marked Exhibit 7, is attached to plaintiff's reply herein.

73 Conclusions of Law.

1. That the agreement of September 12, 1923, as amended by the agreement of November 6, 1927, and the agreement of March 16, 1928, constitute valid, binding and irrevocable trusts within the meaning of the Revenue Acts of 1926 and 1928.

2. That the transfers by plaintiff on September 12, 1923, November 6, 1927, and March 6, 1928, were consummated on said dates and effective to divest plaintiff of all control over the property transferred and the income derived therefrom during the calendar years ended December 31, 1927, and 1928, and that during said years plaintiff did not receive and was not entitled to and did not enjoy the income aforesaid of said trusts or economic benefits of the property so transferred.

3. That during the calendar year ended December 31, 1927, Ida M. Douglas was entitled to and did receive the sum of Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52), the net income of the Ida M. Douglas Trust for said year.

4. That during the calendar year ended December 31, 1928, Ida M. Douglas was entitled to and did receive the sum of Seventeen Thousand Six Hundred Seventeen and 39/100 Dollars ($17,617.39), the net income of the Ida M. Douglas Trust for said year, and Florence S. Douglas was entitled to and did receive the sum of Twenty-eight Thousand Six Hundred Nineteen and 95/100 Dollars ($28,619.95), the net income of the Florence S. Douglas Trust for said year, save and except One Thousand Forty-six and 98/100 Dollars ($1,046.98), which was paid by First Minneapolis Trust Company to and was received by the insurers of the life of plaintiff as premiums on the policies of insurance referred to in the foregoing Findings of Fact.

5. That plaintiff is liable for the income tax which is due on the sum of One Thousand Forty-six and 98/100 Dollars ($1,046.98) received by the Florence S. Douglas Trust and (as noted in paragraph 7 of the findings of fact above) applied by First Minneapolis Trust Company toward the payment of premiums on insurance on plaintiff's life.

6. That during the calendar years ended December 31, 1927, and 1928 plaintiff did not earn the income realized on the property transferred, as aforesaid.

7. That the following sums, to-wit: Two Thousand Eight Hundred Forty-one and 61/100 Dollars
74 ($2,841.61), paid by plaintiff to defendant on March 30, 1931, and Two Thousand Ninety-four and 78/100 Dollars ($2094.78), paid by plaintiff to defendant on June 4, 1931, constitute erroneous, illegal and excessive collections of income taxes for the calendar years ended December 31, 1928, and 1927, respectively.

8. That plaintiff is entitled to have and recover of defendant the sum of Two Thousand, Five Hundred Fifty-four and 3/100 Dollars ($2,554.03) with interest thereon, according to law, from the 30th day of March, 1931, and the sum of Two Thousand Ninety-four and 78/100 Dollars ($2,094.78), together with interest thereon, according to law, from June 4, 1931, together with his costs and disbursements herein.

Dated 7/27/33.

By the Court,

MATTHEW M. JOYCE, Judge.

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Order.

Pursuant to the Findings of Fact and Conclusions of Law this day entered herein it is, by the undersigned, one of the Judges of the United States District Court, District of Minnesota, Third Division,

Ordered, Adjudged and Decreed that plaintiff, Edward B. Douglas, recover of defendant, Levi M. Willcuts, as Collector of Internal Revenue, for the District of Minnesota, the sum of Two Thousand, Five Hundred Fifty-four and 3/100 Dollars ($2,554.03) paid by plaintiff to defendant on March 30, 1931, and the sum of Two Thousand Ninety-four and 78/100 Dollars ($2,094.78) paid by plaintiff to defendant on June 4, 1931, together with interest on each sum from the date of payment thereof as required by law, together with plaintiff's costs herein.

It Is Further Ordered, Adjudged and Decreed, and the Court hereby so certifies, that there was probable and reasonable cause for the act of the defendant, the Collector of Internal Revenue, in demanding and collecting from the plain-

tiff the income tax aforesaid for the refund of which this judgment is entered.

Dated 7/27/33.

By the Court,

MATTHEW M. JOYCE, Judge.

75 It Is Further Ordered that a stay of forty-two days from this date of all proceedings excepting the entry of judgment and judgment for costs be and the same hereby is granted said defendant within which time it may make a motion for a new trial or take such steps in the premises as it may be advised.

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76 Notice of Appeal.

United States District Court, District of Minnesota, Third Division.

Edward B. Douglas, Plaintiff,
No. 2390. vs. Law.
Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, Defendant.

To Junell, Driscoll, Fletcher, Dorsey & Barker, First National Soo-Line Building, Minneapolis, Minnesota, Attorneys for Plaintiff:

You Will Please Take Notice That the above-named defendant Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, considering himself aggrieved by the judgment of the Court made and entered on the 27th day of July, A. D. 1933, does hereby appeal to the United States Circuit Court of Appeals for the Eighth Circuit from said judgment.

This appeal is taken upon questions of fact and of law and is based upon the records, files, assignments of error, and other papers filed herein.

Dated at St. Paul, Minnesota, this 25th day of October, A. D. 1933.

GEO. F. SULLIVAN,
United States Attorney for the District of Minnesota, and Attorney for Defendant,
221 Post Office Building,
St. Paul, Minnesota.

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Service of the foregoing Notice of Appeal, by copy thereof, hereby is admitted at Minneapolis, Minnesota, this 25th day of October, A. D. 1933.

JUNELL, DRISCOLL, FLETCHER,
DORSEY & BARKER,
Attorneys for Plaintiff,
By Leland W. Scott.

77 Endorsed: Notice of Appeal. Filed October 25, 1933. Margaret L. Mullane, Clerk.

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78 Order Allowing Appeal.

The above named defendant duly having presented his Petition for Appeal and duly having served and filed his Notice of Appeal and Assignments of Error, and no bond on appeal being required of defendant under Section 1001 of the Revised Statutes of the United States, the Court being satisfied that this appeal is taken by direction of the Attorney General of the United States, the prayer of said defendant hereby is granted and accordingly,

It Is Ordered that the appeal of said defendant be and the same hereby is allowed.

Dated at St. Paul, Minnesota, this 25th day of October, A. D. 1933.

MATTHEW M. JOYCE,
Judge of the United States District
Court for the District of Minnesota.

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79 Petition for Appeal.

The above named defendant, considering himself aggrieved by the judgment entered in the above entitled cause on the 27th day of July, A. D. 1933, and desiring to appeal from said judgment in said cause to the United States Circuit Court of Appeals for the Eighth Circuit, presents herewith his Notice of Appeal and Assignments of Error, no bond on appeal being required of defendant under Section 1001 of the Revised Statutes of the United States, this appeal being taken by the direction of the Attorney General of the United States; and defendant prays for an order of this Court allowing said appeal and for a Citation directed to the above named plaintiff requiring said plaintiff to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the city of St. Louis, Missouri, within forty (40)

days from and after the date of said Citation, pursuant to said appeal.

Dated at St. Paul, Minnesota, this 25" day of October, A. D. 1933.

LEVI M. WILLCUTS, as Collector of Internal Revenue for the District of Minnesota,
By Geo. F. Sullivan, United States Attorney for the District of Minnesota, and Attorney for Defendant.

Endorsed: Petition for Appeal and Order Allowing Appeal. Filed October 25, 1933. Margaret L. Mullane, Clerk.

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80 Assignments of Error.

Comes now the above-named defendant Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, by his attorney, George F. Sullivan, United States Attorney for the District of Minnesota, and in the above entitled cause files the following Assignments of Error upon this his appeal from the judgment entered by this Honorable Court on the 27th day of July, A. D. 1933:

I.

The Court erred in denying defendant's motion for judgment in his favor at the close of all the evidence, on the ground that there was no substantial or sufficient evidence to sustain any other conclusion than that defendant should have judgment.

II.

The Court erred in granting judgment in favor of the plaintiff and against the defendant in the aggregate sum of Forty-Six Hundred Forty-Eight and 81/100 ($4648.81) Dollars, with interest thereon from the respective dates of payments thereof by plaintiff to defendant, in that there is no substantial or sufficient evidence to sustain and justify such judgment.

Wherefore, Defendant prays that the judgment entered in favor of plaintiff be in all respects reversed, set aside
81 and vacated, and that the above entitled cause be remanded for such proceedings in the trial court as may be consistent with justice.

Dated at St. Paul, Minnesota, this 25th day of October, A. D. 1933.

GEORGE F. SULLIVAN,
United States Attorney for the District of Minnesota, and Attorney for Defendant,
221 Post Office Building,
St. Paul, Minnesota.

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Service of the foregoing Assignments of Error, by copy thereof, hereby is admitted at Minneapolis, Minnesota, this 25th day of October, A. D. 1933.

JUNELL, DRISCOLL, FLETCHER, DORSEY & BARKER,
Attorneys for Plaintiff.
By Leland W. Scott.

Endorsed: Assignments of Error, Filed October 25, 1933, Margaret L. Mullane, Clerk.

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82 Bill of Exceptions.

United States District Court, District of Minnesota, Third Division.

Edward B. Douglas, Plaintiff,
No. 2390 vs. Law
Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, Defendant.

The above entitled matter came on for trial in the United States District Court for the District of Minnesota at the city of St. Paul, Minnesota, on December 12, 1932, before the Honorable Matthew M. Joyce, Judge of the Court aforesaid, above named parties having stipulated and agreed in writing to trial thereof without the intervention of a jury, the plaintiff being represented by Leland W. Scott, of the law firm of Junell, Driscoll, Fletcher, Dorsey and Barker, of Minneapolis, Minnesota, and the defendant being represented by the United States Attorney for the District of Minnesota of St. Paul, Minnesota, the following proceedings then and there being had:

The following facts relating to plaintiff's first cause of action were admitted by the parties to be true, actual proof thereof being waived, to-wit:

1. That plaintiff is and at all the times material to the issues herein was a citizen of the United States and a resident of Deephaven, Hennepin County, Minnesota;

2. That defendant in the year 1921 and continuously thereafter to the date of the trial hereof was the duly appointed, qualified and acting Collector of Internal Revenue of the United States for the District of Minnesota;

3. That this cause is a suit of civil nature at common law, arising under the Constitution and laws of the United States and particularly under the laws of the United States pertaining to Internal Revenue;

83 4. That on September 12, 1923, plaintiff, Ida M. Douglas, and Minneapolis Trust Company signed, sealed and delivered that certain agreement, in triplicate, dated September 12, 1923, a true and correct copy of which, marked Exhibit I, is attached to plaintiff's complaint herein.

5. That in accordance with and under the provisions of said agreement and on September 12, 1923, plaintiff conveyed, assigned, transferred and set over to Minneapolis Trust Company, as Trustee under said agreement, the securities listed and described in Exhibit A attached to said agreement, which securities consisted of various municipal bonds aggregating $55,200 par value, various industrial and public utility bonds aggregating $42,000 par value, various farm mortgages aggregating $28,000 par value, and various corporate stocks (capital and preferred) aggregating $206,298 par value.

6. That on November 10, 1923, at New York, N. Y., plaintiff wrote and mailed the following letter, which was duly received by the addressee thereof:

"Minneapolis Trust Company, Trustee under Agreement with Edward Bruce Douglas, dated September 12, 1923, Minneapolis, Minnesota.

Gentlemen:

Article 3 on page 2 of this agreement entered into between myself and your company for the benefit of Ida M. Douglas provides that I shall from time to time designate and determine in what securities the trust fund shall be invested, subject only to your approval.

In order to facilitate matters with reference to the investment I hereby waive my right to designate and determine the securities for the investment of said trust funds in the above

referred to agreement and approve any and all investments made by you for said trust.

Yours very truly,

EDWARD B. DOUGLAS."

7. That in accordance with and under the provisions of the agreement of September 12, 1923, aforesaid, plaintiff, on November 6, 1927, conveyed, assigned, transferred and set over to Minneapolis Trust Company, as trustee under said agreement, additional securities to be held by said Trust Company pursuant to the terms, conditions, provisions, and covenants of said agreement, which additional securities consisted of additional municipal, public utility, and industrial bonds aggregating $128,000 par value, which were
84 transferred as aforesaid pursuant to and described in that certain Supplemental Agreement, a true and correct copy of which, marked Exhibit II, is attached to plaintiff's complaint herein.

8. That the net income for the calendar year ended December 31, 1928, earned by the property transferred to Minneapolis Trust Company pursuant to the agreements dated September 12, 1923, and November 6, 1927, aforesaid, and collected by Minneapolis Trust Company, as trustee, and received during said year by Ida M. Douglas as beneficiary of and under the provisions of said agreement of September 12, 1923, was $17,617.39, which was comprised of:

| | |
|---|---|
| Interest on tax-free covenant bonds | $9,260.96 |
| Tax paid at source on tax-free covenant bonds | 185.22 |
| Cash dividends | 6,441.96 |
| Other income | 1,914.47 |

9. That on September 15, 1923, the District Court of Beltrami County, Minnesota, duly entered its judgment and decree absolutely dissolving the bonds of matrimony theretofore existing between plaintiff and the said Ida M. Douglas and forever discharging them from the obligations of their marriage contract, and providing that plaintiff create a trust fund as set out in that certain agreement described in paragraph 4 hereof, and that the said Ida M. Douglas have the provision therein made in lieu of all other alimony or interest in the property or estate of plaintiff.

10. That on March 16, 1928, plaintiff, First Minneapolis Trust Company, and Florence S. Douglas signed, sealed and delivered that certain agreement dated March 16, 1928, a true and correct copy of which, marked Exhibit III, is attached to plaintiff's complaint herein.

11. That in accordance with and under the provisions of said agreement of March 16, 1928, plaintiff conveyed, assigned, transferred and set over to First Minneapolis Trust Company, as trustee under said agreement, the securities listed and described in Exhibit A attached to said agreement, which securities consisted of various mortgages Aggregating $24,000 par value, municipal and public bonds aggregating $152,000 par value, corporate stocks (common, capital, and preferred) aggregating $140,745 par value, and cer-
85 tain various policies of insurance aggregating $67,000 par value. Plaintiff surrendered the power and right to change the beneficiary of policy No. 175,227, issued by Northwestern National Life Insurance Company on plaintiff's life, and policy No. 465,994, issued by the Connecticut Mutual Life Insurance Company on plaintiff's life. The beneficiary on said policies of insurance is Florence S. Douglas and said policies are listed in Schedule B attached to said agreement.

12. That the net income for the calendar year ended December 31, 1928, earned by the property transferred to First Minneapolis Trust Company pursuant to the agreement dated March 16, 1928, aforesaid, and collected by First Minneapolis Trust Company, as trustee, and received during said year by Florence S. Douglas as beneficiary of and under the provisions of said agreement of March 16, 1928, was $28,619.95, which was comprised of:

| | |
|---|---|
| Interest on tax-free covenant bonds.....$ | 120.00 |
| Tax paid at source on tax-free covenant bonds | 2.40 |
| Cash dividends ..... | 17,087.00 |
| Other income ..... | 11,412.95 |

13. That Florence S. Douglas made and filed an income tax return for the calendar year 1928 reporting her net income in said year as $28,619.95, upon which she paid a federal income tax of $1,035.72.

14. On March 15, 1929, plaintiff made and filed a return with defendant as Collector of Internal Revenue of the United States for the District of Minnesota of income for the calendar year ended December 31, 1928, showing therein gross income for said calendar year of Forty-two Thousand, Seven Hundred Forty-seven and 79/100 Dollars ($42,747.79), deductions of Three Thousand Four Hundred Eighteen and 20/100 Dollars ($3,418.20), and net income of Thirty-nine Thousand Three Hundred Twenty-nine and 59/100 Dollars ($39,329.59). Plaintiff did not include in the gross income aforesaid the net income of Seventeen Thousand Six Hun-

dred Seventeen and 39/100 Dollars ($17,617.39) earned and collected from the property transferred to Minneapolis Trust Company pursuant to the instruments dated September 12, 1923, and November 6, 1927, aforesaid, and did not include in said gross income the net income of Twenty-eight Thousand Six Hundred Nineteen and 95/100 Dollars ($28,619.95) earned and collected from the property transferred to First Minneapolis Trust Company pursuant to the agreement dated March 16, 1928, aforesaid, being the respective net incomes derived and received during the calendar year
86 1928 by Ida M. Douglas and Florence S. Douglas as respective beneficiaries of and under the provisions of the respective agreements aforesaid.

15. That plaintiff's said income tax return for the calendar year 1928 was audited and reviewed by the Commissioner of Internal Revenue of the United States on October 16, 1930.

That pursuant thereto said Commissioner notified plaintiff that he (said Commissioner) had determined that plaintiff was required to include in plaintiff's return aforesaid as gross income the net income (mentioned in paragraph 8 hereof) derived and received during said calendar year 1928 by Ida M. Douglas as beneficiary of and under the provisions of the agreement described in paragraphs 4, 5 and 7 hereof and that plaintiff was required also to include in plaintiff's return aforesaid as gross income the sum of $1,046.98 representing a portion of the net income earned and collected in the calendar year 1928 from the stocks, bonds, mortgages and other property deposited with the First Minneapolis Trust Company as aforesaid, in accordance with and under the provisions of the agreement described in paragraph 10 hereof, which sum of $1,046.98 consists, according to the determination of said Commissioner, of interest on tax-free covenant bonds in the amount of $4.39, other income in the amount of $417.51, and dividends in the amount of $625.08, and represents the portion of said net income applied in the calendar year 1928 by said Trust Company to the payment of premiums on the insurance policies mentioned in paragraph 11 hereof and disbursed from said income earned and collected as aforesaid.

That pursuant to such determination, the Commissioner of Internal Revenue of the United States included said sums, to-wit: the sum of $17,617.39 and the sum of $1,046.98 in plaintiff's gross income for the calendar year 1928, recomputed plaintiff's tax liability for said year accordingly, and determined that plaintiff was liable for an additional tax on said calendar year in the amount of $2,581.74, which amount,

together with interest thereon in the sum of $259.87, was assessed by said Commissioner against plaintiff in March, 1931.

87 That on March 28, 1931, defendant demanded of plaintiff that plaintiff pay the sum of $2,841.61, being the aggregate amount of the additional tax with interest as aforesaid, and that pursuant to such demand and under protest and to prevent distraint and the imposition of further interest, penalties and costs, plaintiff paid defendant the sum of $2,841.61 on March 30, 1931.

That on April 8, 1931, plaintiff filed with said Commissioner of Internal Revenue his claim for the refund of the sum paid defendant on March 30, 1931, as aforesaid, a true and correct copy of which claim, marked Exhibit IV, is attached to plaintiff's complaint. On December 4, 1931, said Commissioner rejected plaintiff's said claim in full by letter dated December 4, 1931, a true and correct copy of which, marked Exhibit V, is attached to plaintiff's complaint.

* * * * * *

The following facts, relating to plaintiff's second cause of action, were admitted by the parties to be true, actual proof thereof being waived, to-wit:

16. The facts set forth in paragraphs 1, 2, 3, 4, 5, 6, 7, and 9 hereof.

17. That the net income for the calendar year ended December 31, 1927, earned by the property transferred to Minneapolis Trust Company pursuant to the agreement dated September 12, 1923, aforesaid, and collected by Minneapolis Trust Company, as trustee, and received during said year by Ida M. Douglas as beneficiary of and under the provisions of the agreement described in paragraphs 4, 5, 6, and 7 hereof was $12,610.52, which was comprised of:

Cash dividends in the sum of .....$9,857.66
And other income amounting to .....$2,752.86

18. On March 15, 1928, plaintiff made and filed a return with defendant as Collector of Internal Revenue of the United States for the District of Minnesota of income for the calendar year ended December 31, 1927, showing therein as plaintiff's gross income for said calendar year the sum of Fifty Thousand Fifty-nine and 31/100 Dollars ($50,059.31) as plaintiff's deductions the sum of Six Thousand Nine Hundred Seventy-eight and 18/100 Dollars ($6,978.18)

and as plaintiff's net income the sum of Forty-three
88 Thousand Seventy-one and 13/100 Dollars ($43,-071.13). Plaintiff did not include in the gross income shown, as aforesaid, the net income of Twelve Thousand Six Hundred Ten and 52/100 Dollars ($12,610.52) earned and collected from the property transferred to Minneapolis Trust Company pursuant to the instruments dated September 12, 1923, and November 6, 1927, aforesaid, being the net income derived and received by Ida M. Douglas, as aforesaid.

19. That plaintiff's said income tax return for the calendar year 1927 was audited and reviewed on March 5, 1931, by the Commissioner of Internal Revenue of the United States; that pursuant thereto said Commissioner notified plaintiff that he, said Commissioner, had determined that plaintiff was required to include in plaintiff's return aforesaid as gross income the net income (mentioned in paragraph 17 hereof) derived and received during said calendar year 1927 by Ida M. Douglas as beneficiary of and under the provisions of the agreement described in paragraphs 4 to 7 hereof inclusive;

That pursuant to such determination, the Commissioner of Internal Revenue of the United States included said sum, to-wit: $12,610.52 in plaintiff's gross income for said calendar year 1927, recomputed plaintiff's tax liability for said year accordingly, and determined that plaintiff was liable for an additional tax in said calendar year in the amount of $1,758.38, which amount, together with interest thereon in the sum of $336.40, was assessed by said Commissioner against plaintiff in May, 1931.

That on June 3, 1931, defendant demanded of plaintiff that plaintiff pay the sum of $2,094.78, being the aggregate amount of the additional tax, with interest, as aforesaid; and that pursuant to such demand and under protest and to prevent distraint and the imposition of further interest, penalties and costs, plaintiff paid to defendant said sum of $2,-094.78 on June 4, 1931.

That on June 15, 1931, plaintiff filed with the Commissioner of Internal Revenue of the United States his claim for the refund of the sum so paid by plaintiff to defendant on June 4, 1931, a true and correct copy of said claim, marked Exhibit VI, is attached to plaintiff's complaint. At the time of the commencement of the above entitled action more than six (6) months had expired since the date of filing said claim and plaintiff had not been notified that said Com-

missioner of Internal Revenue had rendered his de-
89 cision thereon and said Commissioner had not rendered his decision thereon at the time of the commencement of the above entitled action. No part of the additional tax and interest thereon, paid by plaintiff to defendant on June 4, 1931, has ever been refunded to plaintiff.

20. That the agreements referred to in paragraphs 4, 6, 7 and 10 constitute the only agreements by and between the parties thereto relative to the subject matter thereof.

* * * * * *

The foregoing facts having been admitted as aforesaid, the plaintiff rested and the defendant rested, whereupon plaintiff moved for judgment in his favor and against defendant on the ground and for the reason that there is no substantial evidence or facts in the case to sustain any other conclusion, which motion was taken under advisement.

Thereupon defendant moved for judgment in his favor and against the plaintiff on the ground and for the reason that there is no substantial evidence or facts in the case to sustain any other conclusion, which motion was denied and an exception to such denial taken and allowed.

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90 Stipulation Approving Bill of Exceptions.

It is stipulated and agreed hereby that the foregoing transcript, consisting of 8 typewritten pages, may be accepted, signed, settled and allowed as the Bill of Exceptions or settled case in the above entitled matter; that the same includes all of the evidence offered and received at the trial, save and except the exhibits referred to in and forming a part of Plaintiff's complaint in the above entitled cause; that said exhibits may be considered by the Circuit Court of Appeals as fully as though the same were completely set out in this Bill of Exceptions; that this Bill of Exceptions shows all the proceedings, objections, rulings and exceptions made, taken, and granted on the trial of said cause and that the same may be settled by the Court as the Bill of Exceptions and case.

Dated this 8" day of Jan., 1934.

JUNELL, DRISCOLL, FLETCHER,
DORSEY & BARKER
Attorneys for Plaintiff.
By Leland W. Scott.

GEORGE F. SULLIVAN,
United States Attorney for the District of Minnesota and Attorney for Defendant.
By Geo. A. Heisey, his assistant.

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91 Order Approving Bill of Exceptions.

Upon the foregoing Stipulation, the foregoing transcript consisting of 8 typewritten pages hereby is settled and allowed as a full, true and complete transcript of all the evidence introduced at the trial of the above entitled cause, and includes all the objections, rulings, exceptions and proceedings had and taken in the trial of said cause, and the same hereby is duly allowed as the Bill of Exceptions and settled case.

Dated at St. Paul, Minnesota, 8th day of January, 1934.

MATTHEW M. JOYCE,
Judge of the U. S. District Court
for the District of Minnesota.

Endorsed: Filed January 8th, 1934. Margaret L. Mullane, Clerk. By Joseph T. Lynch, Deputy.

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92 Citation on Appeal.

United States District Court, District of Minnesota, Third Division.

Edward B. Douglas, Plaintiff,
No. 2390. vs. Law
Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, Defendant.

The United States of America,

To the Above Named Plaintiff, Edward B. Douglas, and to his Attorneys, Junell, Driscoll, Fletcher, Dorsey & Barker, First National Soo Line Building, Minneapolis, Minnesota:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit in the City of St. Louis, in the State of Missouri, forty (40) days from and after the date of this Citation, pursuant to an appeal taken and filed in the office of the Clerk of the United States District Court for the District

of Minnesota, notice of said appeal having been served upon you in the above entitled cause, wherein Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, above named, is the appellant, and you are the appellee, to show cause, if any there be, why the judgment rendered against said appellant in said cause should not be reversed and why speedy justice should not be done to said appellant in that behalf.

Dated at St. Paul, Minnesota, this 25th day of October, A. D. 1933.

MATTHEW M. JOYCE,
Judge of the United States District
Court for the District of Minnesota.

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Service of the foregoing Citation by copy thereof is hereby admitted at Minneapolis, Minnesota, this 28th day of October, A. D. 1933.

JUNELL, DRISCOLL, FLETCHER,
DORSEY & BARKER,
Attorneys for Plaintiff,
By Leland W. Scott.

Endorsed: Filed in U. S. District Court on Oct. 31, 1933.

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94 (Order Extending Time to File Transcript.)

Whereas, in the above-entitled cause on appeal, a citation duly was issued by this court on October 25, 1933, returnable forty days thereafter, and

Whereas, above-named defendant, by his attorney, George F. Sullivan, United States Attorney for the District of Minnesota, has applied for further enlargement of the time stated in said citation, now therefore, for good cause shown,

It Is Hereby Ordered that said citation be and the same hereby is enlarged further and the time for the appearance of the above-named plaintiff and his attorney of record, as required by, and for the purposes stated in said original citation, in the United States Circuit Court of Appeals for the Eighth Circuit, hereby is extended and enlarged to and including January 3, 1934.

Dated at St. Paul, Minnesota, this first day of December, 1933.

By the Court:

MATTHEW M. JOYCE,
Judge.

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Service of the foregoing Order, by copy thereof, hereby is admitted this 8th day of December, A. D. 1933.

JUNELL, DRISCOLL, FLETCHER, DORSEY & BARKER,
Attorneys for Plaintiff,
By Leland S. Duxbury.

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95 Return on Service of Writ.

United States of America,
District of Minnesota—ss:

I hereby certify and return that I served the annexed Order Enlarging Citation on the therein-named Junell, Driscoll, Fletcher, Dorsey & Barker, Attorneys for Plaintiff by handing to and leaving a true and correct copy thereof with Leland S. Duxbury, member of the above named firm of attorneys at Minneapolis in said District on the 8th day of December, A. D. 1933.

BERNARD ANDERSON,
U. S. Marshal,
By T. J. Beatty, Deputy.

Endorsed: Order Enlarging Citation. Filed December 8th, 1933, Margaret L. Mullane, Clerk.

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96 (Order Further Extending Time to File Transcript.)

Whereas, In the above entitled cause on appeal a Citation heretofore issued, the forty day period specified therein being about to expire and the Bill of Exceptions in said cause not having been settled and allowed as yet, and defendant by his attorney of record having applied for an enlargement of said Citation—

Now, Therefore, It Is Ordered That the Citation heretofore issued in said cause be and the same hereby is enlarged to and including February 12, 1934, and that the time for the appearance of above named plaintiff and his attorneys of record and for filing the transcript of the record in said

cause on appeal, as required by and for the purposes stated in said original Citation, in the United States Circuit Court of Appeals for the Eighth Circuit, be and the same hereby is extended to and including said 12th day of February, 1934.

Dated at St. Paul, Minnesota, this 29th day of December, 1933.

By the Court:

MATTHEW M. JOYCE,
Judge.

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Due and personal service of the foregoing Order, by copy thereof, hereby is admitted this 30 day of Dec. A. D., 1933 at Minneapolis, Minnesota.

JUNELL, DRISCOLL, FLETCHER, DORSEY & BARKER,
Attorneys for Plaintiff,
By Leland W. Scott.

Endorsed: Filed December 30, 1933. Margaret L. Mullane, Clerk.

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97 Praecipe for Transcript.

It is stipulated and agreed hereby, between the undersigned respective counsel for the above named parties, plaintiff and defendant, that the Clerk of the United States District Court for the District of Minnesota be and she hereby is directed to prepare and certify a transcript of the record in the above entitled case for the use of, and to make a return to, the United States Circuit Court of Appeals for the Eighth Circuit by including therein the following:

1. Summons.
2. Complaint.
3. Original answer.
4. Amended answer.
5. All stipulations extending time within which to answer Complaint.
6. Reply.
7. Notice of Trial
8. Stipulation waiving jury.

9. Findings of Fact, Conclusions of Law and Order for Judgment.

10. Judgment.

98 11. Bill of Exceptions, together with Stipulation and Order allowing same.

12. Notice of Appeal.

13. Assignments of Error.

14. Petition for Appeal.

15. Order allowing Appeal.

16. Citation on Appeal.

17. All Orders enlarging Citation.

18. Election to file typewritten transcript to be printed under the supervision of the Clerk.

19. This Praecipe for Transcript.

20. Admissions and certificates of service endorsed on above mentioned papers.

Dated at Saint Paul, Minnesota, this 8" day of Jan. 1934.

JUNELL, DRISCOLL, FLETCHER, DORSEY & BARKER,
Attorneys for Plaintiff,
By Leland W. Scott.

GEORGE F. SULLIVAN,
United States Attorney for the District of Minnesota, and Attorney for Defendant.
By Geo. A. Heisey, His Assistant.

Endorsed: Filed January 8th, 1934. Margaret L. Mullane, Clerk, By Joseph T. Lynch, Deputy.

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99 Election as to Printing of Record.

To the Clerk of the United States District Court for the District of Minnesota:

In pursuance of the Praecipe therefor, filed in the above entitled cause, you hereby are respectfully requested to prepare the transcript in typewritten form on the appeal by the above named defendant, taken from the judgment entered on the 27th day of July, 1933, in said cause, in order that said transcript may be filed in the office of the Clerk of the United

States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri:

And said defendant hereby elects to have the record in said cause on appeal as aforesaid, printed under the supervision of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Dated at Saint Paul, Minnesota, this 30" day of December, 1933.

GEORGE F. SULLIVAN,
United States Attorney for the District of Minnesota, and Attorney for Defendant.
By Geo. A. Heisey,
His Assistant.

Endorsed: Filed January 8th, 1934. Margaret L. Mullane, Clerk, By Joseph T. Lynch, Deputy.

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100 (Clerk's Certificate to Transcript.)

United States District Court, District of Minnesota, Third Division.

I, Margaret L. Mullane, Clerk of said District Court do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Eighth Circuit, that the foregoing, consisting of 100 pages numbered consecutively from 1 to 100, inclusive, is a true and complete transcript of the records, pleadings, orders and final judgment in the case of Edward B. Douglas, Plaintiff, vs. Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, defendant, in accordance with the praecipe for such transcript, a copy of which is included in said transcript; and I do further certify and return that I have annexed to said transcript and included within said paging the original Citation, together with the admission of service thereof.

In Witness Whereof, I have hereunto set my hand as the Clerk aforesaid, and affixed the seal of said Court, at St. Paul, in said District, this 1st day of February, 1934.

Seal
U. S. Dist. Court
Third Div.
Dist. of Minnesota

MARGARET L. MULLANE,
Clerk.

Filed Feb. 3, 1934, E. E. Koch, Clerk.

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[fol. 82] Appearances of counsel omitted in printing.

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[fol. 83] Order of Submission, June 1, 1934, omitted in printing.

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[fol. 84] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT, MAY TERM, A. D. 1934

No. 9938

LEVI M. WILLCUTS, as Collector of Internal Revenue for the District of Minnesota, Appellant,

vs.

EDWARD B. DOUGLAS, Appellee

Appeal from the District Court of the United States for the District of Mimesota

Mr. Milford S. Zimmerman, Special Assistant to the Attorney General (Mr. Frank J. Wideman, Assistant Attorney General, and Mr. Sewall Key, Special Assistant to the Attorney General, were with him on the brief), for appellant.

Mr. Leland W. Scott (Messrs. Junell, Driscoll, Fletcher, Dorsey and Barker were with him on the brief), for appellee.

Before Stone, Circuit Judge, and Bell, District Judge

OPINION—September 10, 1934

STONE, Circuit Judge, delivered the opinion of the court:

This is an appeal by the collector from a judgment according refund of income taxes.

On the 15th of September, 1923, a decree of divorce was entered in favor of Ida M. Douglas, wife of Edward Bruce [fol. 85] Douglas, appellee. Three days prior thereto, the above parties and the Minneapolis Trust Company entered into a trust agreement whereby appellee deposited certain securities of par or estimated value of $300,000 with the

trust company as trustee and further provided for the delivery to the trustee, on November 6, 1927, of further property to be received from his father's estate. The trustee was given full power of control, reinvestment and change of the securities in the trust fund "subject, however, to the consent and approval" of appellee and the further right in appellee to designate and determine investments subject to the approval of the trustee (acting in that respect for the wife as to the reasonable safety and adequate income producing nature of the securities). The declared purposes of the trust were to pay to the wife during her life, from the income of the trust estate, $15,000 annually from September 1, 1923, to November 6, 1927, and thereafter $21,000 annually, with a provision that in case the net income from the trust fund should not prove sufficient to make any of the above payments the husband, upon request, should make good such deficiency or, in default thereof, the deficiency should be made up from the principal of the trust fund. In case the net income from the trust fund should exceed the annual payments required the trustee should pay such excess to the husband or his successors, subject to the right of the trustee to reserve therefrom reasonable amounts to fairly insure the prompt meeting of future payments to the wife. "Net income" is defined as meaning income from the trust fund exclusive of profits from sale of items in the fund and exclusive of stock dividends (these exceptions to become a part of the principal of the trust fund) and less income tax paid by the trustee. Power to change the trustee is reserved to the appellee and his successors. The trust is to terminate at the death of the wife and the principal of the trust fund then to revert to appellee or his successors. Another provision is as follows:

"It is expressly agreed by and between the parties hereto, and more especially by the party of the second part, that the provisions herein made for her are in lieu of, and in full settlement of alimony, and of any and all dower rights or statutory interests in the estate of the party of the first part, and in lieu of any and all claims for separate maintenance and allowance for her support."

[fol. 86] Besides dissolving the marriage, the decree of divorce provides:

"It Is Further Adjudged and Decreed that the defendant provide and create the trust fund as set out in that certain agreement between said parties and the Minneapolis Trust Company as trustee now on file with said trustee, and that the plaintiff have the provision therein made in lieu of all other alimony or interest in the property or estate of the defendant and that neither party have any costs or disbursements herein."

In his individual income tax returns for the years 1927 and 1928, appellee omitted income realized by the trust estate and paid to the wife thereunder. A redetermination by the Commissioner resulted in the inclusion of this item in each of those years and the tax thereon was paid under protest. Thereafter, proper demand for refund was made and this action seasonably brought. With a small reduction in the tax for 1928, which reduction is not in question here, the court adjudged recovery of the tax paid on account of the inclusion of this item in the above two years. As the matter comes here, the only thing involved is the propriety of including such income from the trust estate in the personal income taxable to appellee.

One contention of the Commissioner is that the entire income from this trust is taxable to the creator thereof because, under its terms, the trust estate is to revert to the creator after it has served the purpose of its creation and also the creator is entitled to the surplus annual income of the trust above the required payments to the wife. We do not see why either or both of these provisions should, of themselves, have such result; however, they may bear upon the main contention in its appeal, hereafter to be examined.

The bald fact that after an irrevocable trust has served its purpose the trust estate is to revert to the creator does not, without more, make the income during the trust period that of the creator for tax or any purposes. The statute is aimed at taxation of income. It expressly recognizes trust estates as taxable entities and specifically points out the trustee or the beneficiary as the taxpayer for incomes from such estates. If the creator of the trust is beneficially entirely separated from that income under all allowable tax considerations, he is as though a total stranger thereto. The duration of the trust and the dis- [fol. 87] position of the corpus at the termination of the

trust are, of themselves alone, usually quite immaterial. Also, it is unimportant, of itself, that the surplus income of a trust goes to the creator. If a well disposed person desiring to assure the proper education of the child of a friend by providing an annual fund therefor of $1,000 should create an irrevocable trust of $25,000 with provisions that at the end of ten years the trust should terminate and the corpus return to him and that during the trust any annual income above $1,000 should be paid by the trustee to him, it would require an inescapably clear expression of Congressional intent to believe that a statute meant to tax, as income to the creator during the trust, anything beyond the actually accruing annual surplus income and, if such construction were compelled, the validity of such an imposition would be widely open to question.

The main and more serious contention of the Commissioner is that the creator of this trust is taxable for the income therefrom because that income is "used to pay a legal and adjudicated obligation which he owed, and in so doing conferred the benefit upon him." The argument is that the trust was created to provide an income in lieu of alimony or other interest in his estate and was, by the court granting the divorce, specifically decreed in lieu thereof. Therefore, it is said to follow that since this trust was created to meet a personal and legal obligation he was bound to fulfill and since the income therefrom was devoted to that purpose, it was so used for his benefit as to constitute it his income.

In efforts to avoid income or estate taxes, various devices have come to the courts. From decisions thereon has evolved the general rule that where the creator receives "the substance of enjoyment" (Burnet v. Wells, 289 U. S. 670, 677) of the income it is regarded as his for taxation purposes. Instances where such enjoyment has been held to exist are contracts for assignments of income (Lucas v. Earl, 281 U. S. 111), assignments of future income (Burnet v. Leininger, 285 U. S. 136), contracts for payment of obligations of the taxpayer by another (Old Colony Trust Co. v. Commissioner, 279 U. S. 716; United States v. Boston & Maine R. Co., 279 U. S. 732) and payment of premiums of insurance on the life of the taxpayer from income of a trust created by him which was revocable (Du Pont v. Commissioner, 289 U. S. 685) or irrevocable (Burnet v. Wells, 289 U. S. 670).

[fol. 88] Among the devices employed to avoid income and estate taxes none has been more used than trusts dealing with members of a family and the courts have been alert to prevent such avoidance by this means. The question here is whether this trust is of that character—irrespective of whether tax avoidance was an impelling motive or was not. In determining this it is the effect upon rather than the motive of the creator in forming the trust. In the majority opinion in Burnet v. Wells, 289 U. S. 670, the validity of a statutory requirement (Section 219 (h) Revenue Acts of 1924 and 1926) that insurance premiums on the life of the creator paid from the trust were taxable to him as income was upheld because there was recognized a benefit to the creator there from the performance of a pressing social duty and a usual manner of providing for dependents (p. 681). The dissent was grounded on the view that the benefit to the creator must be "something more tangible than a purpose to perform a social duty, or the recognition of a moral claim as distinguished from a legal obligation" (p. 683); and that "the distinction to be observed is between the devotion of income to payments which the settlor is bound to make, and those which he is free to make or not make, as he may see fit" (p. 684).

The contention here by the Commissioner is that the income of this trust was employed to meet a legal obligation which appellee was bound to make. Whether this was the character of this trust is the determining problem. Before divorce, the legal obligation to provide maintenance for his wife rested upon appellee. Whether that obligation would continue after divorce would depend solely upon the orders of the court granting the divorce. As is not unusual, the parties agreed to a disposition having this situation in view. That disposition was clearly, as revealed in its terms, solely for the purpose of providing an annual income for the wife after divorce. It was not a transfer of title to property to the wife in lieu of what the court might order as alimony. The main practical and economic differences between this arrangement and one for decreed or agreed annual alimony payments by appellee are that it segregated a definite portion of his property to which alone the wife could look for annual income from her former husband and made the amount of income to her largely dependent on the income from his property. The purpose and effect of this arrangement was to provide a substitute

for alimony. This effect became a finality when the decree [fol. 89] of divorce specifically provided that appellee should "provide and create" the above trust fund and that the wife "have the provision therein made in lieu of all other alimony or interest in the property or estate" of appellee.

The only thing the wife received was income from the trust estate. She received this only because it was "in lieu of all other alimony" or interest. The trust was created for the sole purpose of furnishing such income. Its function was to provide a method of paying alimony. The payment of alimony was ordered and this method prescribed by the court. The payment of alimony in this form was a legal obligation which appellee was bound to meet. This took the form of "income". It was taxable as income. It was taxable (under either opinion in Burnet v. Wells supra) to appellee because it directly benefitted him by discharging a legal obligation he was found to perform.

The judgment should be reversed and remanded with instructions to proceed in accord with this opinion.

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[fol. 90] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 9938

LEVI M. WILLCUTS, as Collector of Internal Revenue for the District of Minnesota, Appellant,

vs.

EDWARD B. DOUGLAS

JUDGMENT—September 13, 1934

Appeal from the District Court of the United States for the District of Minnesota

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Minnesota, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby,

reversed with costs; and that Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota, have and recover against Edward B. Douglas the sum of —— Dollars for his costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with instructions to proceed in accordance with the opinion of this Court filed herein September 10, 1934.

September 13, 1934.

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[fols. 91-98] Petition for Rehearing, covering 8 pages, filed Oct. 8, 1934, omitted from this print. It was denied, and nothing more, by order of Oct. 22, 1934.

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[fol. 99] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING PETITION FOR REHEARING—October 22, 1934

This cause came on this day to be heard upon the petition for a rehearing, filed by Counsel for Appellee.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of this cause, be, and the same is hereby, denied.

October 22, 1934.

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IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION FOR STAY OF MANDATE—Filed Oct. 26, 1934

Now comes the above named Appellee, Edward B. Douglas, by Leland W. Scott, his attorney, and respectfully moves this Honorable Court to stay and withhold its mandate in the above entitled action, for the purpose of permitting said Appellee to file with the Clerk of the Supreme Court of the United States his petition for a writ of certiorari in said cause, until and including the 30th day of November, 1934, and to order that the stay of said mandate be continued, if on or before that date

said petition is filed and the Clerk of this Court receives from the Clerk of the Supreme Court his certificate of said filing, until the final disposition of said cause by the Supreme Court of the United States, all as provided by Rule 32 of this Court.

[fol. 100] Dated October 25, 1934.

Leland W. Scott, Attorney for Edward B. Douglas, Appellee, 1300 First National-Soo Line Bldg., Minneapolis, Minnesota. Of Counsel: Junell, Driscoll, Fletcher, Dorsey & Barker.

[File endorsement omitted.]

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IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER STAYING ISSUANCE OF MANDATE—October 29, 1934

On consideration of the motion of appellee for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, it is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

October 29, 1934.

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[fol. 101] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 102] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 8, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certi-

fied copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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Endorsed on cover: File No. 39,169. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 541. Edward B. Douglas, Petitioner, vs. Levi M. Willcuts, as Collector of Internal Revenue for the District of Minnesota. Petition for a writ of certiorari and exhibit thereto. Filed November 26, 1934. File No. 541, O. T., 1934.